



# **State Sovereignty and the Contemporary Global Economy**

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**STATE SOVEREIGNTY  
AND THE CONTEMPORARY GLOBAL ECONOMY**

A Dissertation  
Presented to the Faculty of the Graduate School  
of Cornell University  
in Partial Fulfillment of the Requirements for the Degree of  
Doctor of Philosophy

by  
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August 2010

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# STATE SOVEREIGNTY AND THE CONTEMPORARY GLOBAL ECONOMY

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Cornell University 2010

Claims that state sovereignty has been damaged or diminished by contemporary economic globalization have become commonplace. In the interest of clarifying and eventually assessing these claims, I provide accounts of *sovereignty* and *sovereignty violation*. I end with preliminary assessment of several of the most commonly-voiced claims about the effects of economic globalization on sovereignty.

In Chapter 1, I sort through the concepts and associations caught by the term ‘sovereignty.’ I observe that the term can be used to refer to both the international legal tradition according to which only states may claim a certain important kind of authority, and the very kind of authority claimed in accordance with this tradition. As these are related but not identical subjects of inquiry, I provide thorough introductions to both sovereignty, the institution, and sovereignty, the kind of authority.

In Chapter 2, I argue that a position of *authority* is constituted by (1) an end or set of ends the pursuit of which requires interference with the activities of some set of agents; together with (2) the norms that shape the ways in which an agent occupying the position may pursue those ends. When an agent exercises authority, she adopts the ends for which her position exists, and exercises her will in their pursuit. I argue that the exercise of authority is therefore a special case of the exercise of *autonomy*—the free and purposeful direction of one’s will. This suggests that authority can be diminished by acts customarily understood to be autonomy-violating. I further argue that violating an authority’s autonomy problematically hinders the pursuit of the important ends for the sake of which the authority curtails other agents’ autonomy.

In Chapter 3, I pinpoint the autonomy-violating features of coercion, exploitation, and manipulative deception: I argue that *options* enable autonomy, and that each of these ways of attempting to influence others' behavior diminish those others' option sets.

Chapter 4 surveys a range of practices and institutions associated with contemporary economic globalization, arguing that some of them, though not all, do attempt to influence states in autonomy-violating ways; and, therefore, do diminish state sovereignty.

## BIOGRAPHICAL SKETCH

Sara Streett was born in 1979 in Boston, Massachusetts, to Helen and Joseph Streett. As a child, she moved with her family from Stafford Springs, Connecticut, to North East, Pennsylvania. She was educated in the North East School District, graduating from high school in 1997. Sara dual-majored in English and philosophy at Smith College, graduating *cum laude* in 2001. She began work at the Sage School of Philosophy in 2002.

Sara lives with her partner, Laura Finkel, in Poughkeepsie, New York. She currently works as an adjunct instructor in philosophy at Marist College. Sara spends her free time visiting historic Hudson Valley homes with Laura, quilting, and walking Ellie the dog.

*To Laura.*

*We made it!*

## ACKNOWLEDGMENTS

I am indebted to my advisor, Richard W. Miller, and to the past and present members of my dissertation committee: Henry Shue, Michele Moody-Adams, Derk Pereboom, and Erin Taylor. Dick, I cannot thank you enough for your guidance over the years. I thank the recent past and present faculty of the Sage School for stimulating classes and incisive critical feedback on my work. I thank the faculty for granting me two Sage Fellowships (in 2002/3 and 2005/6), which greatly aided me in the completion of my degree.

I am very grateful to Scott MacDonald, Timothy Hinton, Benj Hellie, and Neelam Sethi for valuable experiences as a teaching assistant. I am also grateful to Cornell's Knight Institute for Writing in the Disciplines, for affording me my first opportunity to design and teach courses independently. Special thanks to Katy Gottschalk of the Knight Institute, whose excellent Writing 700 course shaped my current approach to teaching. I am indebted to the Knight Institute for awarding me a Buttrick-Crippen Fellowship (2007/8), which aided in the development of my teaching and my research.

For the past five years, Daniel Koltonski has been the best friend and colleague I could have asked for. Thank you for your unfailing support, your understanding, and for so many wonderful conversations. Thanks also to the two other members of Emily's Thursday Salon: Emily Muller and Louise Vigeant. I have learned so much from both of you, and I feel lucky to have such friends.

I am thankful for the love and support of my Smith girls: Morgann Reilly, Elizabeth Walters, Brazee Smith, Marina Chow, and Julie Stoltz. We have a rare friendship and I know how fortunate I am to be a part of it. I don't know how I would have done this without you. I don't think I could have.



I am grateful beyond words to my partner, Laura, whom I love fiercely and who has been there for me every single day since I embarked on what has been a long and not-painless process. You make me laugh like no one else; even better, you think I'm funny. I'm so thankful that we have somehow been able to keep laughing together. I would be lost, both literally and figuratively, without You Girlfriend.

Finally: it is difficult to know how to thank my parents; no words could possibly be adequate. But a few things come to mind: thank you for living through months of colic with a premature baby. Thank you for reading *Busy Day*, *Busy People* to me over and over and over. Thank you for enduring years of ballet recitals, and for comforting me when I realized that I would never be a ballerina. Thank you for my little brother. Thank you for all the time you spent with us going camping, baking bread, watching *Star Trek*, and building snow dinosaurs; and thank you for the time you made us spend learning to amuse ourselves. Thank you for owning so many good books.

None of that captures what I really want to say, though, which is that I am grateful to have been born to two people who are very different in many ways, but who both possess the traits of intelligence, curiosity, wit, and great kindness. I couldn't ask for better or more loving parents, and I love you both right back.

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## Introduction

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In the last twenty years, claims that economic globalization threatens the existence or integrity of the state have been ubiquitous. Susan Strange, for instance, wrote in 1996,

[I]mpersonal forces of world markets, integrated over the postwar period more by private enterprise in finance, industry and trade than by the cooperative decisions of governments, are now more powerful than the states to whom ultimate political authority over society and economy is supposed to belong. Where states were once the masters of markets, now it is the markets which, on many crucial issues, are the masters over the governments of states. And the declining authority of states is reflected in a growing diffusion of authority to other institutions and associations, and to local and regional bodies, and in a growing asymmetry between the larger states with structural power and weaker ones without it.<sup>1</sup>

Strange seems worried about the turn of events she describes. Kenichi Ohmae, on the other hand, heralded the end of the nation-state (in a book called, fittingly, *The End of the Nation-State*) with silver trumpets, claiming that states are “unnatural, even impossible, business units in a global economy.”<sup>2</sup>

These claims and others like them were motivated by the increasing permeability of state borders to information, goods, and capital; and by the increasing reach and density of global governance institutions that seem to undercut or replace state authority. And yet, the state has stubbornly refused to disappear. Moreover, the suggestion that states are in danger of dissolving, or of unwittingly dismantling themselves, seems to mischaracterize what’s going on. Strange clarifies her position thus:

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<sup>1</sup> Strange (1996), 4.

<sup>2</sup> Ohmae (1995), 5. Thomas Friedman’s 2000 *The Lexus and the Olive Tree* was similarly giddy. Of course, these sweeping claims produced a number of equally sweeping denials that economic globalization was having any effect whatsoever on the state; see Waltz (1999).

No one seriously expects states to disappear...[but]...the progressive integration of the world economy, through international production, has shifted the balance of power away from states and toward world markets.<sup>3</sup>

Strange's claim is not that *some* states are less powerful than they used to be; it is that the role of states as such in the orchestration of human affairs on the global scale has changed. Saskia Sassen echoes this assessment: "We are seeing a repositioning of the state in a broader field of power and a reconfiguring of the work of states."<sup>4</sup>

Many writers have suggested that what this repositioning and reconfiguring represents for states is a loss of *sovereignty*: traditionally the defining characteristic of statehood, sovereignty (it is suggested) is being damaged or diminished while states themselves somehow remain. Joseph Camilleri and Jim Falk write, "What is in question is not the importance of the state but its sovereignty,"<sup>5</sup> expanding on this claim as follows:

In the second half of the twentieth century we are witnessing the emergence of a complex yet relatively integrated world system which encompasses, and in part operates through the state system, but whose logic and *modus operandi* are no longer subordinate to the will or organizational priorities of sovereign jurisdictions.<sup>6</sup>

And Jan Aart Scholte claims, simply, that "while the state has retained pivotal significance in globalizing capitalism, it has lost its former core attribute of sovereignty."<sup>7</sup>

My aim in this project is to investigate the claim that economic globalization is damaging or diminishing sovereignty. I intend to analyze its meaning, and, to a limited extent, ascertain its plausibility.<sup>8</sup>

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<sup>3</sup> Strange (1996), 46.

<sup>4</sup> Sassen (2000), 110.

<sup>5</sup> Camilleri and Falk (1992), 83.

<sup>6</sup> Camilleri and Falk (1992), 99.

<sup>7</sup> Scholte (2003), 442.

<sup>8</sup> Naturally, the claim has its opponents: Linda Weiss argues, "[I]n contrast to globalization orthodoxy, states are rendered far from powerless and passive as they confront global market forces. In principle at

## **A. Sovereignty**

Much of the project is devoted to the analysis of sovereignty, but it seems important to provide a quick sketch of the concept here.

In a sovereignty system, only a sovereign entity may claim and enjoy *supreme legal authority* in a territory. What this means, in brief, is that the territory and population covered by the system is carved up into entities which are legally, geographically, and politically exclusive. Each sovereign entity is the final authority in its territory; there are no regional, central, or extra-legal authorities entitled to legislate in or for the sovereign entities (though they may contract among themselves). A nascent sovereignty system began in Europe in the 17<sup>th</sup> century, and as the modern state developed and more parcels of earth became states, a sovereignty system developed.

Our understanding of what a state is and how it may operate vis-à-vis other states is shaped to a significant degree by our understanding of sovereignty. In virtue of being sovereign, states claim a monopoly on the use of force in their respective territories, a right against external intervention in domestic matters, and an exclusive right to negotiate and sign agreements on behalf of their respective bodies politic. These are among the most significant defining features of states as we know them, and they belong to states because the tradition of sovereignty says they do.

## **B. Contemporary economic globalization**

The broad features of contemporary economic globalization that cause controversy are well-known by now, but worth reiterating at the beginning of a project

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least, if not always in practice, there is much that states can do to foster wealth creation and social wellbeing” (Weiss 1998, xi). Weiss argues that the state is simply adapting to the new realities of the global economy, and that reports of the death of sovereignty have been greatly exaggerated (Weiss 1998, xi, 195, 212).

such as this.<sup>9</sup> They include the orchestration of global commerce by the World Trade Organization (WTO), the lending policies of the International Monetary Fund (IMF) and World Bank, the proliferation of regional trade agreements and trading blocs like the North American and Central American Free Trade Agreements (NAFTA/CAFTA) and the European Economic Community (EEC), and the increase in number, size, and influence of multinational or transnational corporations. Many of these institutions—notably the WTO, IMF, and World Bank—have been heavily criticized over the past forty years for promoting market-fundamentalist principles that insist on the liberalization of capital markets, the elimination of subsidies to domestic industry and agriculture, the reduction or elimination of tariffs on imports, and the reform of domestic economic structures in favor of straightforward economic growth over social and infrastructure spending. Contemporary economic globalization, understood in this way, can be dated from the 1944 Bretton Woods Conference, which created the IMF and the International Bank for Reconstruction and Development (IBRD), the founding institution for today's World Bank Group; and which led to the formulation of the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO, in 1947.<sup>10</sup>

It might be noticed that my description of contemporary economic globalization names particular institutions and practices and places little emphasis on globalization as a phenomenon of increase. 'Globalization,' it might be argued, refers

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<sup>9</sup> It should be noted that this project does not include any analysis of the effects of other sorts of globalization on sovereignty (e.g. the effects of decentralized global terrorist networks, or the impact of the internet and other social media). These are important issues, but in this project, I am focusing on *economic* institutions and practices only.

<sup>10</sup> I should say at this point that this does not exhaust the set of important concerns about contemporary global economic arrangements. One significant concern that I am not able to take up in this project is that the conceptualization and execution of aid and development strategies in poor countries have in many cases left their peoples only marginally better-off (at best) while doing nothing to enable or encourage their governments to take over the provision of services now provided by a galaxy of non-governmental and intergovernmental organizations (NGOs and IGOs). This is a grave concern, and it is not unrelated to questions about state sovereignty. But to discuss it would add greatly to the reach of what is already a sprawling project; for that reason I have left it out.

to the processes whereby the world is becoming increasingly interconnected (i.e. *globalized*): an economically globalized world is one in which markets are closely linked, in which the economies of geographically disparate locations have many and significant ties and can substantially affect each other. Merely to list the practices and institutions that characterize the contemporary global economy is not to explain the phenomenon of contemporary economic *globalization*. There are two reasons for approaching globalization in the way I do. First, *increasing economic interconnectedness* is a nonspecific and decontextualized notion. Economic interconnectedness could take numerous forms, and it could increase in myriad ways. Learning *that* interconnectedness is increasing tells us nothing about *how* it is increasing (i.e. by what means and with what consequences), and that would seem to be the more relevant issue for most conceivable purposes. Understanding how interconnectedness is increasing requires the identification and examination of the institutions, practices, and ideas through which the increase is facilitated.

Second, this emphasis on the *hows* instead of the *thats* helps put to rest concerns that interconnectedness is *not*, in fact, increasing: that contemporary economic globalization (CEG) and its implications have been blown out of proportion. It is claimed by some that economic globalization, understood as a phenomenon of increase, is neither a recent trend nor a novel one; and that the only thing that has increased significantly in the past fifty years is our awareness of our interconnectedness. According to Martin Wolf, for instance, the world goes through periods of tight connectedness, followed by phases of conflict and a consequent loosening of connections. Wolf argues that the world is approximately as interconnected now as it was around the turn of the last century: the globalization of



the last fifty years is simply re-tightening connections loosened by the World Wars.<sup>11</sup> One might think that if this is true, then questions about the effects of CEG on sovereignty (or anything else, for that matter) would be both irrelevant and alarmist. If economic globalization is merely part of a predictable pattern of global economic expansion and contraction that naturally reflects the course of geopolitical events, and not a new, exceptional phenomenon, what grounds fears that one such expansion is threatening sovereignty—which, if thinkers like Wolf are to be believed, has weathered 350 years of expansions and contractions?

### **C. Why this question?**

There are at least two good reasons for taking worries about the effects of CEG on sovereignty seriously. First, though it may be true that the world goes through periods of tight economic interconnectedness followed by destructive conflict and then rebuilding of ties, the specific contours of the global economy certainly change over time. They have obviously changed since sovereignty's infancy in the seventeenth century, and they have changed markedly just since the beginning of the last century. Again, *whether* there has been any net increase in interconnectedness per se over the past few decades seems far less important than *how* markets and national economies have come to be interlinked and enmeshed. More to the point: as I suggested at the beginning of this section, what concerns CEG's critics are the policies of the IMF and WTO (etc.), not interconnectedness per se. These concerns cannot be dispelled by arguing that economic globalization is nothing new.

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<sup>11</sup> See Wolf (2005), chapter 8, for a cogent presentation of evidence supporting the thesis that the contemporary world economy is no more “globalized” than the world economy of the decades preceding World War I. Wolf does not argue, based on this empirical thesis, for a dismissal of all concerns about contemporary globalization, but he does want to dispel the “fantasy” that “there were once happy little local communities untouched by the outside world, living in ecological harmony and cultural isolation” (Wolf 2005, 99).

Second, while sovereignty is a very old institution, the kinds of claims that interest me have never before arisen in quite the way they arise now because it is only in the past sixty-five years that the vast majority of the world's land has been accounted for by the claims of independent states, all of which relate to each other as nominal equals in one common political arena. In 1900, there were only 54 sovereign states<sup>12</sup>—and a number of those were the seats of vast empires. The peculiar Holy Roman Empire still existed in Europe. Nearly all of Africa was carved up into European colonial possessions, as were large chunks of Asia and even the Middle East.<sup>13</sup> The sovereign states of South and Central America had been independent for less than a century. In 2010, there are still some seventy territories and protectorates. But they account for very little of the world's territory and population relative to the

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<sup>12</sup> This is the best count I can produce based on the listing of countries in the 1900 *Statesman's Year-Book* (J. Scott Keltie, ed. London: MacMillan and Co.).

<sup>13</sup> See Jackson (1990), Chapter 4, for a very helpful discussion of sovereignty and post-war decolonization. See also Beitz (1999), 92-105, on the development of the principle of political self-determination (i.e. the claim that every nation or "people" has a right to direct its own future). The principle of self-determination has for many decades been interpreted to mean that peoples, or nations, have the right to a sovereign state. This interpretation is not without problems (see Beitz 1999, 105-115, for a quick rundown), but it is very helpful in one important respect.

As we will learn in the next chapter, one of the central pillars of the institution of sovereignty is the prohibition on intervention in the domestic affairs of other states. But the institution has been ill-equipped to explain why a sovereign state ought not to engage in the imperial assimilation of peoples and regions unaffiliated with any formally-constituted state. (For most of sovereignty's history, many of the entities that qualified as sovereign were, in fact, empires.) The idea that a territory could be occupied but *unclaimed*—an idea that underpinned the imperial expansion of Europe into the rest of the peopled globe—was dependent on the assumption that a claim to sovereign statehood is the only normative grounds available for resisting incursions from outsiders into the region occupied by one's own people. This is not to say that racism and other, equally ugly biases played no role in helping the kings of Europe to believe that they could claim rights to lands occupied by others. It is only to say that the international political framework in ascendency throughout modernity—the sovereignty system—undoubtedly helped to enable the perception that only a sovereign state can meaningfully and defensibly claim a territory.

The statist interpretation of the principle of self-determination, for which we find support in some of the most important mid-century declarations of international law, including the Atlantic Charter and the United Nations Charter (see Article 73), claims political standing for peoples without indigenous sovereignty equal to that of peoples *with* indigenous sovereignty. Peoples or nations, on this view, are the germs or seeds of states; a nation's lack of a home-grown state apparatus is a problem that established states ought to help them remedy—not a license for established states to annex, assimilate, pillage, or destroy the territory to which the nation lays claim. This represented a significant development in the history of the theory of sovereignty, problematic though we may find it today.

world's sovereign states, of which there are 192,<sup>14</sup> and which occupy the majority of all six inhabited continents. Economic globalization may not be new, but a global sovereign states system certainly is.

For these reasons, it is not irrelevant or alarmist to ask questions about the effects of the specific policies, institutions, and practices that constitute the contemporary global economy on the institution of sovereignty which, for the first time in history, finds the whole world within its purview.

#### **D. Why (should philosophers care about) this question?**

As one might expect given the omnipresence of the concept of globalization in both academia and popular culture, academic philosophers have paid a great deal of attention to CEG (and contemporary globalization of other sorts) of late. But for the most part, we have focused on CEG's problematic impacts on poverty, inequality, human rights, or the environment: not sovereignty, *per se*. Much of the work on sovereignty, and on CEG's impact on sovereignty, has been done by scholars of international relations, political economy, and political science. Sovereignty is the key concept in social-scientific theorizing about state behavior in the international sphere, and I think there is a sense among many political philosophers that the concept is the rightful property of these disciplines.

The main reason for this, I think, is that sovereignty is a "morally flaccid" concept (to use David Luban's overly evocative phrase).<sup>15</sup> Luban is right that sovereignty, as traditionally understood, does not entail moral or political legitimacy: a state's claim to sovereignty is recognized provided the state is minimally effective, and the principle of sovereignty is still (though less frequently) invoked in defense of

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<sup>14</sup> Depending on how territories with disputed or unclear status (e.g. Taiwan) are counted, this number can go up or down a bit.

<sup>15</sup> Luban (1980a), 166.

brutal dictators and even genocidal states.<sup>16</sup> Luban has been highly critical of the institution in his work on the morality of intervention, as have many (other) philosophers, political leaders, public intellectuals, and activists with cosmopolitan moral or political sympathies.<sup>17</sup> Sovereignty is sometimes attacked by its more likely defenders, communitarians, as well, for delegitimizing both sub-state forms of political self-determination *and* secession movements, thus trapping certain national and ethnic minorities in political structures that do not fulfill their aspirations.<sup>18</sup> And it is excoriated by environmentalists for hindering efforts to mount a rapid and effective response to climate change.<sup>19</sup> Sovereignty is seen not only as devoid of any inherent moral weight but also as instrumentally useless at best and pernicious at worst: a perpetual obstacle to the realization of important moral values. It can thus do no moral or political “work” and is of little interest to value theorists. But with very few exceptions, the literature alleging sovereignty violation by economic globalization is *critical* of globalization on the grounds that it damages sovereignty. Why all this concern about protecting what many thoughtful people have judged to be a hindrance to moral progress?

To get a feel for the kinds of claims being made and the concerns that might underpin them, let us take a look at one of the most contentious issues in CEG: conditioned lending.

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<sup>16</sup> One notable recent example of this is China’s diplomatic defense of the regime in Khartoum. China explicitly endorsed a principled policy of non-interference in the Sudan for some time (see, for instance, James Traub’s 2006 piece for *The New York Times Magazine*, “The World According to China”). Some have noted, however, that China’s adherence to a very strict interpretation of the institution of sovereignty has more recently started to give way (see, for instance, Orville Schell’s 2007 “Beijing’s New Internationalism” for *Newsweek*).

<sup>17</sup> See, for instance, some of the responses to Michael Walzer’s *Just and Unjust Wars*, first published in 1977: Beitz (1979), Doppelt (1978), Doppelt (1980), Luban (1980a), Luban (1980b). More recently: Annan (1998), Annan (1999), Shue (2004).

<sup>18</sup> See, for instance, Miller (1995); Taylor (1993); Walzer (2000), 89-95.

<sup>19</sup> Brown (2003), 565-6; Held and McGrew (2002), 17.

## **E. The conditioned lending case**

The IMF was conceived as a fund into which any state could deposit surpluses against future balance-of payments crises<sup>20</sup>—its own or another state’s.<sup>21</sup> The IMF would provide short-term, low-interest loans<sup>22</sup> to states in crisis to prevent market collapse and currency failure, which could lead to the collapse of other markets and currencies and a worldwide depression (as world leaders had learned in 1929). When the price of oil skyrocketed following the Arab Oil Embargo in 1973, many (non-oil-producing) developing countries, some newly independent and exporting mostly low-priced commodities, suddenly found themselves in severe balance-of-payments crises. These countries became deeply indebted to Western countries and their banks, which were only too happy to loan out the oceans of money being deposited by oil-exporting countries and the companies doing the extracting and refining.<sup>23</sup> The IMF provided loan after loan to the indebted countries, attaching conditions to the loans designed to lead to economic growth and thus increase the likelihood that the country could pay back IMF and other Western loans. The standard program of so-called “structural adjustment” conditions were reflective of neoliberal (or “Washington Consensus”) economic theories, calling for cuts in government spending, the privatization of state-run industries, the deregulation of financial markets, and the liberalization of trade policy.<sup>24</sup> But given that growth has not always resulted from these measures, and that even when it has much of the surplus generated must be put toward servicing loans, it is unclear whether the IMF’s conditions have been beneficial to client countries or just

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<sup>20</sup> A balance-of-payments (or liquidity) crisis occurs when the cost of a state’s imports outstrips the value of its exports and it lacks the hard currency reserves to make up the difference.

<sup>21</sup> Accounts of the founding and purposes of the IMF are not difficult to find; see Head (2005), Feldstein (1998), McQuillan and Montgomery (1999), Peet (2003), Vines and Gilbert (2004).

<sup>22</sup> States draw on their own surpluses initially, but once these are exhausted they may borrow from the pool of other states’ surpluses.

<sup>23</sup> Peet (2003), 71-2.

<sup>24</sup> See Peet (2003), 204-5; McQuillan and Montgomery (1999), 65; Rodrik (2001) for comprehensive listings and discussions of Washington Consensus policies.

to developed countries, which have gained access to new markets when client states have made the required adjustments.<sup>25</sup> Indebted developing states have been forced to take loans with objectionable strings attached in order to avoid devastating financial consequences. Some argue that the presentation of this choice by the IMF is a violation of these states' sovereignty. Others might not call it a "violation," but see some diminishment of sovereignty in the transaction.

Certainly *something* troubling is happening here—sovereign states (as opposed to colonies or protectorates—non-sovereign entities) are generally taken to have the exclusive right to make their own monetary, fiscal, and trade policies. And while an indebted developing state can, strictly speaking, choose not to take an IMF loan, it is hard to shake the feeling that the state is being coerced or manipulated in some unacceptable way by the IMF (and perhaps by the wealthy countries, which provide the majority of the IMF's lendable money and control the majority of available votes in the organization's decision-making processes). Going into default is not a real option for a state, and the IMF knows this. But does this feeling point to a genuine problem with the practice of conditioned lending? More to the point: does it point to a genuine conflict between state sovereignty and conditioned lending?

Imagine the following case, a version of which was first presented by Robert Nozick, which I will call *Opportunistic Rescuer*:<sup>26</sup>

I am alone on the shore of a lake and I see a swimmer struggling, very likely drowning. I glance around quickly and notice one other car in the nearby parking area. It must be the swimmer's car, and I could use a second vehicle. I yell out to the swimmer, "Hey! I'll help you if you'll give me your car!" The swimmer assents, I save his life, and he turns over to me the title of his car.

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<sup>25</sup> On this point, see Stiglitz (2002).

<sup>26</sup> See Nozick (1969), 449.

In offering to save the swimmer in exchange for his car, I would be taking advantage of another's misfortune for my own gain, and this is clearly wrong. Given the interest payments that accrue to Northern banks from the continued indebtedness of the developing world (coupled with the benefits to Northern industry of market reforms that open developing countries to Northern exports), the analogy might be thought apt.<sup>27</sup>

It could be objected, of course, that there is nothing wrong with benefiting, after the fact, from one's own altruism. The analogy cannot work without the assumption that the IMF and the strong states placed structural adjustment conditions on loans to developing states with the explicit aim of creating benefits for Northern banks and industries; these entities must not merely *happen* to gain from IMF policies which are themselves intended benevolently. Perhaps it is best to assume that the IMF and the strong states of the world impose only those conditions they honestly believe will be helpful to indebted states. The benefits that accrue to Northern banks and industries are, we can stipulate, incidental. But benevolently-intended interference is still interference, right? Imagine another scenario, *Benevolent Rescuer*:

I am alone on the shore of a lake and see a swimmer struggling, as before. I notice that he is a very heavy-set man. I believe, not unreasonably, that he would not be having so much trouble swimming if he were healthier, and for his sake, I want him to avoid near-drownings in the future. I yell out that I will help him if he promises to change his diet and embark on an exercise regimen. I tell him that I will check up to make sure he is sticking to some sensible plan. He agrees to my condition, I save his life, and he embarks on diet and exercise plans of his own design. A national sandwich chain hears of our story and gives me a lucrative endorsement deal.

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<sup>27</sup> Sebastian Edwards notes that "while the costs of adjustment are fully borne by the highly indebted country, its benefits in the short run are (almost) fully recovered by the creditors in the form of higher debt repayment" (Edwards 1999, 75). Walden Bello suggests that the primary *aim* of the WTO and the Bretton Woods institutions was to contain and control the economic aspirations of the developing world so that these aspirations would not put a dent in first-world prosperity (for instance, by forcing first-world countries to compete for markets with developing country producers). See Bello (2000), 55-56.

I did not undertake to save the man with the aim of getting a sandwich-endorsement contract; my motives were entirely benevolent. But even under these circumstances, my offer would seem to be quite problematic. It is not my later receipt of the endorsement contract that is bothersome about the case so much as the fact that I have shown a profound lack of respect for this man's autonomy by conditioning my assistance on his agreeing to change his lifestyle. Nothing could possibly entitle me to place such a condition on my assistance.

At this point in the dialectic on conditioned lending (i.e. when the IMF's critics appear to be pulling ahead), it is usually pointed out by IMF apologists that the state *agrees* to the conditions of the loan, and we do not ordinarily think that when a state accepts a loan, or signs an agreement of any kind, its sovereignty is threatened or violated. In fact, it is argued, the exclusive right to make treaties and agreements on behalf of a particular group of people is one of the prerogatives *granted* by the doctrine of sovereignty.

Moreover, the IMF apologist continues, the drowning swimmer cases misrepresent the case of conditioned lending in a serious way: they suggest that the IMF's duty to aid countries in liquidity crises by providing emergency loans is relevantly similar to the natural moral duty persons have to assist nearby accident victims. But this analogy is misleading: the rescuer does not need this swimmer to change his lifestyle in order to effectively aid future accident victims she encounters. But the IMF, like any lending institution, must be repaid if it is to continue to function. When a bank lends money to an individual, it is entitled to take steps to ensure that its loan will be repaid. The bank might insure itself against borrower default by demanding collateral, or it might simply perform "due diligence" to ensure that the borrower is likely to repay (e.g. the bank might run a credit check, or demand proof of employment). The IMF is doing no more than this in demanding that borrower



countries take steps to increase GDP (thereby increasing the amount of money available for servicing the loan).

Is this argument by the IMF apologist satisfactory? Imagine one final case,

*Benevolent Nutritionist:*

I am alone on the shore of a lake and see a swimmer struggling, as before. I notice that he is a very heavy-set man. I believe, not unreasonably, that he would not be having so much trouble swimming if he were healthier, and for his sake, I want him to avoid near-drownings in the future. As it happens, I am a nutritionist and personal trainer. I yell out that I will help him if he promises to follow a plan of diet and exercise of my choosing. He agrees to my condition, I save his life, and he embarks on the plan of diet and exercise I prescribe.

Perhaps conditioned lending *is* relevantly analogous to this case. In *Benevolent Nutritionist*, I am not merely performing “due diligence;” I am imposing a *particular* plan of diet and exercise on the swimmer—an intrusion that gives me ongoing influence over his life and his choices. While a bank might check a loan applicant’s credit-worthiness, no bank would (or would be permitted to) condition a loan on an applicant’s pledge to switch to a new job of the bank’s choosing. That would be an intolerable violation of the applicant’s autonomy, and the IMF’s structural adjustment loans are arguably more akin to this outlandish and fortunately imaginary practice than to simple due diligence.

To return to the question from the previous section: philosophers should care about whether economic globalization is damaging or violating state sovereignty for two reasons. First, the question clearly cannot be answered through empirical investigation of some set of facts and circumstances. The facts are clear enough; it is the conceptual apparatus used to interpret the facts (including the concepts of *sovereignty*, *sovereignty violation*, *autonomy*, etc.) that is lacking in clarity. Giving

accounts of these concepts that illuminate the conversation about economic globalization and sovereignty is undoubtedly a philosophical project.

Second, if a concrete and plausible critique can be made of the persistent intuition that structural adjustment loans (and other features of CEG) affect state sovereignty *somehow*, and that this is something to be concerned about, for *some* reason, then that might necessitate a reconsideration of the judgment that sovereignty is nothing more than a hindrance to moral progress. It should be said that this is primarily a project of conceptual analysis, not moral theory, *per se*. But it is intended as a contribution to a larger project: the evaluation of sovereignty's role in our moral and political world.

## Chapter 1. Sovereignty

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The emergence of sovereignty represented the ascendancy of a new kind of authority in late medieval Europe. Daniel Philpott characterizes the social and political organization of the European Middle Ages this way:

The Pauline metaphor of the body of Christ...renders the era well. All believers in the true faith were members of a single organism in which all individuals found their identity and purpose, where all lived under common laws and morals, where none were severed or independent in their authority or beliefs; yet in which not all were equal in purpose or role, but like the parts of the body were arrayed in an inclusive division of labor, a complex hierarchy with the pope and emperor at the head, with kings, barons, bishops, dukes, counts, and peasants all in their proper place, all connected by the most labyrinthine ligaments of privilege and prerogative.<sup>28</sup>

The story of sovereignty is the story of how a system like the one Philpott describes slowly gave way to the one we know now, in which the globe is divided into approximately two hundred bodies politic, each of which occupies a determinate, bounded territory and each of which is represented by a sovereign state.<sup>29</sup> It is the story of the consolidation and centralization of power by early modern kings and the economic, political, religious, and intellectual developments that enabled them to begin cutting away the “labyrinthine ligaments of prerogative and privilege” and establishing a new political form based on the allegiance of each individual in a bounded region to the single highest legal authority in that region.

In Robert Purnell’s words, the term ‘sovereignty’

denotes that condition in which a state is in fact free, and is generally accepted as being free, to manage its internal affairs and conduct

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<sup>28</sup> Philpott (2001), 77.

<sup>29</sup> This is, of course, an oversimplification: not every territory corresponds to one and only one body politic, and borders can change. But these states of affairs represent variations on (or deviations from) an identifiable norm.

external relations with other states, without dictation by or intervention on the part of any other state.<sup>30</sup>

But this does not give us enough information to conduct a serious analysis of the concept in other terms (i.e. in terms of authority and autonomy). The purpose of this chapter is to fill in Purnell's sketch, so it is clear what the following chapters are analyzing.

## **A. Preliminaries**

### *1. A Word About Statehood*

It seems important to say something about what a state is before explicating the concept of state sovereignty, but as it turns out, it is difficult to talk about statehood without first talking about sovereignty. The reason for this is that the state as we know it is in large part a construction of sovereignty. The first sovereigns were persons—kings. The concept of sovereign prerogative was a diplomatic and legal tool developed and used for the consolidation and preservation of the king's authority against the incursions of outsiders and the claims to authority of others in the realm. Many of the characteristics of modern states (e.g. territorial stability and a central bureaucratic government invested with final legislative and executive authority) are inherited from the prerogatives claimed by the absolute monarchs of the early modern era. The problem, then, is that it is difficult to know whether a putative attribute of the state is really an attribute of the state per se, or an attribute of sovereignty. I will, therefore, make only minimal claims at this point about states and their properties.

The 18<sup>th</sup>-century philosopher and jurist Emmerich de Vattel, in his 1758 work *The Law of Nations*, defined a state thus:

A Nation or a State...is a political body, a society of men who have united together and combined their forces in order to procure their

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<sup>30</sup> Purnell (1973), 265.

mutual welfare and security. From the fact that this group of men forms a society in which they have common interests and must act in concert it is necessary that a public authority be set up, which shall regulate and prescribe the duties of each member with respect to the object of the association.<sup>31</sup>

In keeping with long tradition, I understand a state to be a body politic together with the government that (ostensibly) realizes the will of the body.

This, of course, is not terribly concrete. A different (but entirely compatible) definition of a state is to be found in the 1933 Montevideo Convention on the Rights and Duties of States. Montevideo stipulates that a state has four essential features: “a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”<sup>32</sup>

Given the historical relationship I briefly described, it might be suggested that the proposition ‘States are sovereign’ is analytically true. The great theorist of international relations Lassa Oppenheim, for instance, argued that a state is “in existence when a people is settled in a country under its own Sovereign Government.”<sup>33</sup> But I do not think this is the case: my claim here is not that it is impossible to prize apart *sovereignty* and *statehood*—merely that it is difficult to do so.

## 2. Terminology

The definitions for ‘sovereign’ and ‘sovereignty’ provided in the Oxford English Dictionary are a useful place to begin—not because a dictionary definition is

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<sup>31</sup> Vattel (1916), 11.

<sup>32</sup> Montevideo Convention (1933), Article I.

<sup>33</sup> Oppenheim (1912), 108. (Oppenheim’s *International Law* was published first in 1905. Most references are from the second edition, published in 1912, but I have taken a few from the 1947 sixth edition, edited by H. P. Lauterpacht. The 1912 version has been favored unless Lauterpacht’s edits clarify without substantively altering Oppenheim’s text.) Oppenheim took the inclusion of the word ‘sovereign’ in this definition quite seriously, explaining that not merely a government, but a *sovereign* government was required for statehood.

an adequate substitute for a philosophical account, of course, but because at least in this case, a dictionary can help clarify what concept is to be explained by the account.

Taken as an abstract condition, ‘sovereignty’ has had two broad meanings:

- (1) “Supremacy or pre-eminence in respect of excellence or efficacy;”  
and
- (2) “Supremacy in respect of power, domination, or rank; supreme dominion, authority, or rule.”<sup>34</sup>

The first is the kind of supremacy one achieves by being better, at something, than everyone or everything else attempting to do that thing; the term suggests both mastery of the task at hand and superiority over others attempting that task. We could accurately describe a repeat Wimbledon champion (e.g. Martina Navratilova, Steffi Graf, Venus Williams) as *sovereign* in her day.<sup>35</sup>

But it is the second broad meaning above that gives rise to the more precise meanings the term ‘sovereignty’ bears in international relations and law: the meaning that indicates final or independent authority, rather than excellence at some activity. Within this sense of ‘sovereignty,’ we can distinguish between a psychological/social usage of the term, occasionally applied to individuals in much the same way that ‘autonomy’ is applied; and the political/legal usage, traditionally applied to states.

In the medieval period in Europe, ‘sovereignty’ was synonymous with ‘rule’—to be sovereign was to have land and rank.<sup>36</sup> One did not even need to be a king: the term did not necessarily imply final authority or supremacy.<sup>37</sup> Writing in 1933, C.H. McIlwain notes,

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<sup>34</sup> *Oxford English Dictionary*: “sovereignty,” defns1 and 2, respectively. See also “sovereign, adj,” defns II: 1-3, for definitions of that term corresponding to (1); and II: 4-7 for definitions corresponding to (2).

<sup>35</sup> This meaning is not much in use anymore. Interestingly, though, related words like ‘supremacy’ and ‘dominance’—both of which appear in the second definition, above—still have this meaning. For instance: “Williams reigned supreme in 2007;” “Navratilova dominated for five years in the eighties.”

<sup>36</sup> *OED*: “sovereignty,” defn 3.

<sup>37</sup> *OED*: “sovereignty,” defn 1.

[I]n the thirteenth century, the king is “sovereign” in his kingdom, but so is an earl in his earldom, and even a baron in his barony. If the king’s authority is greater than the earl’s or the baron’s, this is primarily because it is wider than theirs, not so much because it is higher in kind.<sup>38</sup>

This usage of ‘sovereignty’ was in keeping with the political landscape of the medieval period, which was characterized by overlapping, mutable authority structures, complex webs of claims and obligations, and no distinct line between the political and the private (in the sense that one could, for example, acquire the right to use or sell the resources in a region, and to tax or conscript the people living there, simply by marrying into the relevant ruling family). Echoing Philpott’s characterization, Camilleri and Falk describe the period thus:

[A] maze of small kingdoms, principalities, duchies and other quasi-autonomous institutions (churches, monasteries and convents enjoying special privileges and immunities, independent cities, guilds, universities, merchants and manors) constituted a cosmopolitan patchwork of overlapping loyalties and allegiances, geographically interwoven jurisdictions and political enclaves.<sup>39</sup>

With the help of early state theorists, including Machiavelli, Bodin, Hobbes, and Louis XIII’s Cardinal Richelieu, the terms ‘sovereign’ and ‘sovereignty’ were appropriated by the monarchs of the sixteenth and seventeenth centuries as signifiers of final and absolute authority—a kind of authority belonging only to kings through divine right.<sup>40</sup> As part of their efforts to consolidate power, the kings of early modern Europe drew putatively permanent borders around territories and claimed sovereignty within those borders. These territories were not yet modern states, by a long shot; nor were they

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<sup>38</sup> McIlwain (1933), 97.

<sup>39</sup> Camilleri and Falk (1992), 12.

<sup>40</sup> The intersections in the development of theories of statehood, sovereignty, monarchical absolutism, and divine right are many and fascinating, but difficult to adequately discuss without deviating considerably from the plan of this project.

part of a regular or well-developed system of similar entities. But it was this shift in the political organization of Europe that brought the term ‘sovereignty’ into use to refer to the highest authority in a fixed, exclusive, independent territory—the way we use the term now.

Finally, we should distinguish between two related meanings of ‘sovereignty’ as the term is used in contemporary international law. Confusingly, ‘sovereignty’ is used to refer both to the kind of authority states claim and exercise (also called *sovereign authority*), and to the tradition or institution in international law in accordance with which states claim and exercise this kind of authority. That is, we talk about the authority of individual states (e.g. “Belgium’s sovereignty”) and the norm that legitimates states’ claims to authority (“sovereignty is an old institution”) using the same term. I will at times refer to the first as *sovereign authority* and the second as *the institution of sovereignty*.

## **B. Supreme legal authority**

Sovereignty is customarily defined as *supreme legal authority in a territory*.<sup>41</sup> To explicate this idea, I’ll start with ‘legal authority in a territory’ and then move on to ‘supreme.’

### *1. Legal authority in a territory*

I will discuss the concept of authority extensively in Chapter 2; for now, suffice it to say that authority should be distinguished from mere or “brute” power. To

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<sup>41</sup> Hinsley uses the phrase ‘final and absolute political authority’ (Hinsley 1986, 17), but for reasons to be discussed later in the chapter, most writers wish to distinguish between *supreme* and *absolute* or *illimitable* authority: see for instance Brierly (1958), 19-20. Philpott uses ‘supreme legitimate authority’ (Philpott 1996, 39), but most writers on sovereignty avoid the term ‘legitimate’ as too freighted with assumptions about human rights and democracy to accurately reflect the traditional understanding of sovereignty.



claim to be powerful is to make a descriptive claim about one's abilities or range of influence. To claim to be an authority is to make a normative claim about the rightfulness or legitimacy of one's exercise of power.

The term 'legal' seems simple enough, but there are at least four different senses of 'legal authority' and they are not often explicitly disambiguated. Despite this, I think the term genuinely signifies all four of them.

The first is a distinction, traceable back through Vattel and Rousseau to Hugo Grotius, between a kind of sovereignty possessed by the people of a state as the ultimate source of its authority (popular or political sovereignty) and the kind possessed and enacted by the state apparatus (legal sovereignty).<sup>42</sup> The terms 'body politic' and 'popular sovereignty' are still used to signify the idea that the people of a state have, together, an authority that overtops that of its government—political authority rather than the authority of the law. It does seem right to say that the authority of the state apparatus is *legal* authority (rather than political authority).

The second sense of 'legal authority' connotes *authority enacted through the administration and enforcement of law*. Legal authority is thus different from, say, religious authority: the latter is enacted through the perpetuation or creation of norms, the performance of rituals, etc. It is also different from the authority that comes with expertise in some subject, which is enacted through demonstration of that expertise. The authority of the state is certainly *legal* in this sense.

The third sense is *authority that is legal rather than illegal*. If one country invades another, destroys the invaded state's governing bodies, and sets itself up as the supreme authority in that territory, its authority is not legal according to international law (because its acquisition of territory was not legal). The inclination to call an

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<sup>42</sup> Vattel identifies sovereignty with the "public authority" established to provide for order among the persons who together form the state. See Vattel (1916), 11.

imperial power's authority in an ill-gotten territory "de facto" sovereignty lends some credence to this interpretation: "real" sovereignty is legal; illegal sovereignty is merely de facto sovereignty.

The fourth and final sense is a kind of amalgam of the second and third. This is the sense of 'legal authority' on which 'legal' is a kind of intensifier of 'authority,' intended to emphasize the difference between authority and mere power. It might happen that a government becomes largely ineffective due to a powerful domestic terrorist or criminal element. In such a case, we might say that the terrorist or crime organization exercises de facto sovereignty in the state. But it seems to me that we would say that in part because their rule is illegal, and in part because they are not really ruling through the mechanism of law. The apparatus for lawmaking is in place in the country: there is a collection of government offices and their holders; formal procedures governing legislative, executive, and judicial activity; specially designated government buildings; official miscellany like seals and letterhead, etc.—but all of that is disconnected from the real power in the state. Legal authority, on the other hand, is *real authority*, not just brute power.

As I said, I think 'legal' in 'supreme legal authority' connotes all of these meanings; which is salient in any particular situation depends, I suppose, on speaker intention.

Finally: the specification that sovereignty is claimed *in a territory* may be simply an artifact of our particular sovereignty system. A claim to sovereignty that was not tied to a bounded geographic location would be comprehensible if it were tied to a particular (perhaps nomadic) group of people instead—and if no one else advanced any territory-based claims to sovereignty in the region traveled by that group. For settled peoples, however, it doesn't make much sense to claim sovereignty

unless a particular geographical area is specified as the region to which the claim applies.

## 2. *Supremacy*

In 1905, Oppenheim explained sovereignty this way:

Sovereignty is supreme authority, an authority which is independent of any other earthly authority. Sovereignty in the strict and narrowest sense of the term implies, therefore, independence all round, within and without the borders of the country.<sup>43</sup>

To be “independent of any other earthly authority,” both “within and without the borders of the country” is to be answerable only to the moral law (or God’s law), not to any positive law or legislator. This raises two questions. First, must a state have unlimited freedom of action within its borders, in order to count as “supreme”? And second, must a sovereign state, in order to remain supreme, refrain from agreeing to any limitations on its freedom of action at the prompting of another state or other external agent?

If the answer to both of these questions is *yes*, then there would seem to be no room to distinguish between *absolute* authority and (merely) supreme authority—and these concepts are clearly different.<sup>44</sup> Supremacy, as we employ the concept today, is compatible with (e.g.) the Establishment Clause in the U.S. Bill of Rights: the U.S. government cannot force its citizens to adopt any particular religion, or tell any religious community how it may practice its religion; such actions are outside the scope of the central government’s authority.<sup>45</sup> Iran, on the other hand, formally claims

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<sup>43</sup> Oppenheim (1912), 109.

<sup>44</sup> Moreover, answering *yes* to both would seem to suggest that a sovereign state has “the same legal right to exercise its will *à l’extérieur*...that it has over subjects in its own territory” (Garner 1925, 5). As recently as 1925, then-President of the American Political Science Association James Garner felt compelled to argue against the view that “attributes to the state absolute and unlimited legal power” *both* internally and externally (Garner 1925, 3).

<sup>45</sup> How this is to be interpreted in hard cases has, of course, been hotly debated.

the right do both of those things and much more. Iran is, if not perfectly absolutist, much closer to it than the United States. A perfectly absolutist state allows no question or decision to fall outside of its bailiwick.

But if the answer to those two questions is *no*—as it must be—we seem to be left trying to determine *how much* domestic freedom of action a state can lose (or never have), and *to what extent* it can enter into agreements with other states, before it ceases to be supreme in its territory.

Because surely there is some limit or threshold: imagine I am arranging to have my kitchen painted. I hire some painters, and introduce myself to them as the Supreme Authority for Determining the Color of My Kitchen. When it comes to deciding what color to paint my kitchen, it's true that I have the final say in the matter. But it seems ridiculous to say that this alone makes me a supreme authority of some kind.

The reason we find ourselves in this pickle is that sovereignty was first conceptualized as absolute authority—the 16<sup>th</sup>-century political theorist Jean Bodin, not uniquely in his time, defined sovereignty as “the absolute and perpetual power of a commonwealth”<sup>46</sup>—and our contemporary conception of sovereignty as supreme legal authority is the result of our having stripped the early modern state of much of its power. Over the past four centuries, monarchical absolutism and matter-of-fact

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<sup>46</sup> Bodin (1992), 1. Bodin explained *absolute power* thusly: “the people or the aristocracy...of a commonwealth can purely and simply give someone absolute and perpetual power to dispose of all possessions, persons, and the entire state at his pleasure, and then to leave it to anyone he pleases, just as a proprietor can make a pure and simple gift of his goods....This is a true gift because it carries no further conditions...whereas gifts that carry obligations and conditions are not authentic gifts. And so sovereignty given to a prince subject to obligations and conditions is properly not sovereignty or absolute power” (Bodin 1992, 8). Interestingly, no small part of Bodin's defense of sovereign absolutism is dependent on his (pre-Kantian) conception of the structure of the will: “[It] is well known that the laws [etc.] of princes, have force only during their lifetimes unless they are ratified by [successive princes]. ... If the sovereign prince is thus exempt from the laws of his predecessors, much less is he bound by laws and ordinances that he has made himself. For although one can receive law from someone else, it is as impossible by nature to give one's self a law as it is to command one's self to do something that depends on one's own will” (Bodin 1992, 12).

imperial brutality have given way to checked-and-balanced, decentralized, and federated state authority structures (courtesy of the Enlightenment, the French revolutionaries, and the more successful American founders). This was undoubtedly a move in the right direction for persons, but it left the state to claim a strange kind of authority that is somehow simultaneously fully independent and highly checked—supremacy, rather than absolutism.

For a long time, there were vigorous debates about where sovereignty resides:<sup>47</sup> in the person of a chief of state (e.g. the king), in the office of the head of government (the president or prime minister), in congress or parliament, in the people, in the constitution, in the union of a federal government and the governments of the member states, or in some complex combination of these.<sup>48</sup> But these debates had mostly petered out by the mid-twentieth century because it began to seem silly to carry on debating about what democracy, the separation of powers, or the existence of federal states meant for where sovereignty, once unified in the person of the king, could be “located.”<sup>49</sup> Sovereignty, it was decided, resides in *the state*. However

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<sup>47</sup> Such debates can be dated to the 13<sup>th</sup> century, when England’s barons organized themselves into a council and forced the Magna Carta upon King John. This dealt a serious blow to the medieval notion that a state is the personal property of its king (see Magna Carta clause 61, and Hinsley 1986, 70-72).

<sup>48</sup> See Jackson (2007), Chapter 4, for a helpful discussion of how sovereignty is manifested by different forms of government.

<sup>49</sup> Mostly, but not entirely: see, for instance, Harold Laski’s introduction to the problem of sovereignty and federalism in the 1929 edition of his *The Problem of Sovereignty*: “[T]here would seem a theoretical deficiency in American government. We do not know who rules. Certainly the president is not absolute. Neither to Congress nor to the Supreme Court is unlimited power decreed. And, as if to make confusion worse confounded, there cut athwart this dubiousness certain sovereign rights possessed by the States alone” (Laski 1929, 267). There are a few distinct problems raised in this passage, not all having to do with federalism, per se. It is worth briefly sketching these problems.

In modern-day Switzerland, the central government operates almost as an administrative service to the twenty-six cantons and their referendum-loving inhabitants. The Swiss government has a broader scope than any of the cantonal governments, but in a number of important respects, it has little more authority than any one of them has. In these and other cases, it’s not clear who or what in the territory possesses truly *independent* decision-making authority: Switzerland has no national military, and the authority of the central government is sharply checked both by the autonomy of the cantons and by the Swiss public.

Second, Switzerland is a federal state with a weak central government—but even federal states with strong central governments (e.g. the United States) share decision-making authority with the members of the federation. While the central government may have the final word on a broad set of issues, there

Switzerland, Spain, the United States, or the United Arab Emirates wants to organize legal authority domestically is none of anyone else's business; all outsiders need to know is that Switzerland alone is sovereign in *this* territory; Spain alone is sovereign in *this* one. This knowledge is enough for the conduct of international relations in accordance with sovereignty norms.<sup>50</sup>

While I think the decision to stop looking for sovereignty's "location" in a federal or otherwise decentralized state was a good one, we still don't have a clear sense of how formal or legal limitations on a state's freedom of action (whether in the form of internal, structural limitations like a separation of powers or a federal power-sharing arrangement, or in the form of agreements made with other states to limit some set of activities) affect state sovereignty.<sup>51</sup> I will endeavor to shed some light on this puzzle in the next chapter, by analyzing the nature of authority.

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may be some issues on which it has no word at all (i.e. issues over which the federation members each have real and final authority in their own sub-territories). In other words, the members of the federation may be incompletely subject to the federal government.

Finally, sovereignty may be hard to locate in any state, federal or unitary, whose chosen form of government includes a meaningful separation of powers. If the United States Congress passes a piece of legislation, the President may veto it. The Congress can enact the legislation anyway with a two-thirds majority vote. The Supreme Court can declare the new law unconstitutional, but the Constitution can be amended if three quarters of the states will ratify the proposed amendment. With apologies to Harry Truman: it isn't entirely clear where the buck stops.

Of course, in unitary states with powerful and unchecked governments, sovereignty is easy to find: look for the person or body that controls the national military, decides constitutional questions, and whose legislative and executive decisions apply without question to the entire country. This person or body is the locus of sovereignty. Sovereignty is easiest to find, that is, in absolutist states.

<sup>50</sup> This is at least part of the reason that we do not any more talk about sovereignty when we talk about political obligation, democracy, federalism, constitutionalism, checked powers, etc. A single theory of sovereignty could be employed to explain and justify both the internal and external independence of an absolutist monarch. As long as every head of state who matters is an absolutist monarch, that theory is entirely sufficient. But distinct explanations and justifications were required for the unique dispositions of internal authority that states developed over time. What remained constant was the external face of sovereignty: legal independence from, and equality with, all other sovereign states; and the sole right to represent a people in negotiations with other peoples.

<sup>51</sup> Robert Jackson has argued that "supremacy and independence are not two separate characteristics: they are two facets of one overall characteristic: sovereignty. Facing inward, the sovereign is the supreme authority in the country. There can be only one sovereign within a country—even if its authority is divided constitutionally between two levels of government, as in a federal state. A federal constitution merely specifies where supremacy resides on any specific issue: that is, whether at the federal level or at the 'state' or provincial level of authority" (Jackson 2007, 11). This explanation sounds tidy, but it does not actually help to clarify how the existence of "only one sovereign" is

### C. Sovereignty as an institution

Much could be said to explain the concept of an institution, but that would take me rather far afield of my main concerns in this project. I think this basic definition will suffice: “Institutions can be defined as connected sets of norms and rules...embedded in stable and ongoing social practices.”<sup>52</sup> As an international legal *institution*, sovereignty consists of a bundle of norms and principles that play a regulative, explanatory, and justificatory role in states’ actions and interactions.

That is to say: one state can object to the actions of another state (or a non-state entity) on the grounds that those actions violate sovereignty, and this is considered a meaningful and serious objection to those actions. The accusing state will likely justify whatever it does in response in terms of its right to protect its sovereignty, and the international community will accept this as the appropriate sort of justification for the action, whether or not the action is ultimately taken to be justified. This is why it is common to refer to sovereignty as an “organizing principle” for international society.<sup>53</sup> This usage reflects the fact that the institution serves to organize and regulate international relations.

I understand the institution of sovereignty to comprise (1) the “principle of sovereignty” and (2) the secondary norms and standards that interpret and sharpen this principle.

#### 1. *The principle of sovereignty*

The heart of the institution as it is traditionally understood is what I will call the *doctrine or principle of sovereignty*:

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compatible with the division of authority among different government institutions or levels of government. As I’ve said, it doesn’t much matter for the purposes of conducting international relations—but that doesn’t make the conceptual puzzle go away.

<sup>52</sup> Hurrell (2007), 59.

<sup>53</sup> See, for instance, Falk (2002), Held (2003).

Only a state, instantiated by a government and those it governs, may claim and enjoy supreme legal authority in a territory.

This principle has implications for the hierarchy of authorities both within a defined territory and outside it. It means that within the territory claimed by a state, the state itself is the highest authority; all other internal (domestic) authorities are subject in non-trivial ways to the state's legal authority.<sup>54</sup> The principle of sovereignty also serves to define states as the "legitimate players" in international society,<sup>55</sup> excluding from international relations as such all entities that are not characterized by the independent legal rule of populations occupying a defined territory.

A *sovereignty system* is a group of states in which each state claims sovereignty (supreme authority) within its own territory,<sup>56</sup> and each, under ordinary circumstances, recognizes the claims of all the others.<sup>57</sup> Hedley Bull writes,

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<sup>54</sup> Vattel wrote, "We observe that by the act of civil or political association, each citizen subjects himself to the authority of the whole body, in all that relates to the common good. This authority is therefore an essential characteristic of the political body or State...." (Vattel 1916, 11). Among other things, the principle of sovereignty establishes the primacy of political association among the variety of associations a person might have and with which she might identify. That is, the principle defines independent, self-governing *political* associations (not religious associations, e.g.) as the fundamental units into which the globe is organized.

<sup>55</sup> Philpott (1996), 39.

<sup>56</sup> Hedley Bull distinguished between a "system of sovereign states" and a "society of sovereign states" as follows: a *system* of states is "formed when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions, to cause them to behave—at least in some measure—as parts of a whole" (Bull 1995, 9); while a *society* of states emerges from a system of states when the states, "conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions" (Bull 1995, 13). It is not entirely clear to me what the essential difference between these two kinds of groups is intended to be, as Bull identifies the three basic goals of a society of sovereign states as follows: to preserve the society itself by containing the power of non-state actors; to maintain the sovereignty of each member state; and to preserve the peace among members (Bull 1995, 16-19). Depending on how these goals are interpreted, they may not require much more cooperation than is required to maintain the peace in a system of states. In any case, I want to be clear that my use of the word 'system' is not intended to invoke this distinction.

<sup>57</sup> Oppenheim wrote, "[S]tatehood alone does not imply membership of the Family of Nations. ... Those States which are members are either original members because the Law of Nations grew up gradually between them through custom and treaties, or they are members which have been recognized by the body of members already in existence when they were born. For every State that is not already, but wants to be, a member, recognition is therefore necessary. A State is, and becomes, an International Person through recognition only and exclusively" (Oppenheim 1912, 116).



“[I]nternational relations is based on the system of sovereign states—independent political communities each of which possesses a government and asserts sovereignty in relation to a particular portion of the earth’s surface and a particular segment of the human population.”<sup>58</sup>

The members of a sovereignty system are formally similar, legally equal, and independent political societies. *Formal similarity* means, as I said a moment ago, that any power that is not a state (any power that fails to take the relevant form) ostensibly falls outside the realm of international relations as such.<sup>59</sup> *Legal equality* means that no state possesses a legal status in the international arena superior to that possessed by any other (though states may vary in terms of power and wealth).<sup>60</sup> *Independence* means that no state exercises suzerainty or dominion over any other.<sup>61,62</sup>

## 2. *Secondary norms*

The secondary norms serve to regulate states’ interactions, and to specify the prerogatives of sovereignty. Philpott explains them this way:

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Naturally, this position is not uncontested. Vattel argued, “Every Nation which governs itself, under whatever form, and which does not depend on any other Nation, is a *sovereign State*. Its rights are, in the natural order, the same as those of every other state. Such is the character of the moral persons who live together in a society established by nature and subject to the Law of Nations. To give a Nation a right to a definite position in this great society, it need only be truly sovereign and independent; it must govern itself by its own authority and its own laws” (Vattel 1916, 11).

<sup>58</sup> Bull (1995), 8.

<sup>59</sup> Bull (1995), 9. There have been exceptions to this rule: for instance, the 1929 Lateran Accords granted sovereignty to the Vatican, which is at best a city-state (and even then, its role as the seat of the Catholic Church is undoubtedly primary; far less important is its role as sovereign legal governor of the land it occupies).

<sup>60</sup> Oppenheim writes, “The equality before International Law of all member-States of the Family of Nations is an invariable quality derived from their International Personality. Whatever inequality may exist between States as regards their size, population, power, degree of civilization, wealth, and other qualities, they are nevertheless equals as International Persons” (Oppenheim 1912, 168).

<sup>61</sup> “Independence and territorial as well as personal supremacy are not rights, but recognized and therefore protected qualities of States as International Persons” (Oppenheim 1912, 178).

<sup>62</sup> Suzerainty as an organizing principle is a kind of middle way between sovereignty and empire. A suzerainty system is one in which a powerful state wins the allegiance of weaker neighbors through force, threat, patronage, etc., but saves itself the hassle of running an empire by allowing its “tributaries” a substantial amount of autonomy over domestic decision-making. It could be argued that sphere-of-influence diplomacy is a form of suzerainty.

[The] norms of sovereignty—the rules that determine what a state is, who can become a state, and what basic prerogatives a state has—define the very entities that fight, ally, trade, balance, bargain, and make peace and set the terms on which they do so.<sup>63</sup>

A state has at least three responsibilities or duties that derive from the principle of sovereignty:<sup>64</sup> there is, first, a duty to respect the sovereignty of other states by avoiding acts of intervention and interference; second, a duty to realize its authority (in its own territory) effectively so as to avoid the spread of destabilizing elements into neighboring states; and third, a duty to honor the “dignity” of other states.

The duty to refrain from intervention is undoubtedly the most important duty a state has to its fellow states, but it has always admitted of exceptions. Until the Hague Conventions of 1907, for instance, one state could forcibly intervene in another to collect debts owed the intervener or its citizens.<sup>65</sup> The permissibility of humanitarian intervention was asserted by many in the 19<sup>th</sup> century,<sup>66</sup> and while particular cases remain controversial even today, the permission is rarely denied categorically. But aggression with intent to annex, colonize, plunder, or destroy has always been prohibited: it was precisely to stop such activities that the kings of early modern Europe entered into the Peace of Westphalia—the pair of treaties that ended the Thirty Years War and which have become the symbol for the start of the modern age in international affairs.<sup>67</sup> We will take a closer look at intervention in the next section.

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<sup>63</sup> Philpott (1996), 37.

<sup>64</sup> States might be thought to have additional responsibilities that are not specifically associated with sovereignty: for instance, the principle of *pacta sunt servanda* (“pacts must be honored”) considerably predates sovereignty but remains an important meta-value in the international arena.

<sup>65</sup> See Hague II, “Limitation of the Employment of Force for the Recovery of Contract Debts,” 18 October 1907. Available at [http://avalon.law.yale.edu/20th\\_century/hague072.asp](http://avalon.law.yale.edu/20th_century/hague072.asp). Accessed 10 March 2010.

<sup>66</sup> See, for instance, Mill’s “Few Words on Non-Intervention.”

<sup>67</sup> Perhaps it goes without saying that this prohibition has been regularly disregarded. It should be made explicit, however, that this was long taken to apply only to other, recognized, sovereign states. Because it delegitimizes powers that are not states, the institution of sovereignty does not have and has never had the conceptual resources necessary to critique or prohibit the aggressive interference of sovereign states in the affairs of societies which lack political organization as we understand it (i.e.

The second duty is a duty of minimal efficacy, and it is different from whatever a state owes its own people as the legal instantiation of their political will. If a state claims sovereign authority but cannot make good on its claim to supremacy, the power vacuum will likely be filled by unsavory elements: thugs, gangsters, drug lords, terrorists. For a variety of reasons, the violence, poverty, and instability such persons cause and thrive upon can cross borders, violating the territory and endangering the sovereignty of an ineffective state's neighbors. Humanitarian concerns entirely aside, every state implicitly demands that its neighbors maintain control over their populations.

The final duty—to respect the dignity of other states—has more- and less-important aspects. Most importantly, a state A must diplomatically “approach” another state B through B's central government. That is, representatives of A are not to negotiate, compact, or otherwise interact in an official capacity with B's opposition parties, rebel factions, or subsidiary governments (unless B has asked A to do so, perhaps to serve as a go-between in domestic peace talks). The less-important aspect of the duty is fulfilled chiefly by avoiding insults and official displays of contempt for other states and their heads of state.<sup>68</sup>

So much for responsibilities. Jean Bodin's 1576 treatise, *Six Books of the Commonwealth*, was the first work on sovereignty to list the core prerogatives of a sovereign.<sup>69</sup>

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which rely on kinship relations), or whose political structures are not centralized, bureaucratic, or linked to particular territories.

<sup>68</sup> Oppenheim writes, “Since dignity is a recognised quality of States as International Persons, all members of the Family of Nations grant reciprocally to one another by custom certain rights and ceremonial privileges. These are chiefly the rights to demand—that their heads shall not be libelled and slandered; that their heads and likewise their diplomatic envoys shall be granted extraterritoriality and inviolability when abroad, and... that their symbols of authority, such as flags and coats of arms, shall not be made improper use of and not be treated with disrespect on the part of other States” (Oppenheim 1912, 175-6).

<sup>69</sup> See Book I, Chapter 10 of *Six Books*. In Bodin (1992), see 58-59 for Bodin's list, on which he expounds in the remainder of the chapter.

- (1) The authority to make law without the consent of any other party;<sup>70</sup>
- (2) The right to wage war and conclude peace agreements;
- (3) The authority to appoint high-level officials;
- (4) Status as the court of final appeal;
- (5) The authority to demand the “faith and homage” of the sovereign’s subjects;
- (6) The right to coin money and control the money supply;
- (7) The right to impose taxes and tariffs.

A *prerogative* (as the concept is employed in this context) is something akin to a special permission: to say that some action is “within my prerogative” is to say that I am authorized to take that action if I choose (or if I deem it necessary).<sup>71</sup> We will return to this concept in the next chapter; for now, I wish simply to point out that the prerogatives Bodin lists are, in updated forms, still claimed by states today. Bodin’s sovereign is the supreme legislative, executive, and judicial authority; the sole possessor of the right to make treaties on behalf of his people; the sole possessor of the right to engage in war; the possessor of a right to demand loyalty and obedience from his subjects; and the right to determine fiscal and monetary policy.

Let me fill out this picture a bit. First, the state monopoly on the use of force within its borders is justified in part by appeal to the duty of efficacy owed by every state to the others. But it is also a prerogative, in that states are taken to be entitled to forbid the formation of private militias and like organizations; to control citizens’ access to arms; and, more ordinarily, to criminalize, prevent, and punish violent acts.

Second, the state alone is entitled to make treaties and agreements on behalf of its body politic as such. No individual, corporation, or civic group can take it upon

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<sup>70</sup> This prerogative, in Bodin’s view, encompasses all the others: the “power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative” (Bodin 1992, 58).

<sup>71</sup> The use of ‘prerogative’ in the context of sovereignty has changed somewhat over time; originally, it referred to the alleged moral right of the sovereign to act illegally if such action was required for the good of the society. See, for instance, Locke’s *Second Treatise on Government*, Chapter 14, “On Prerogative.”

herself or itself to make an agreement that binds a state. For instance, since I am not a duly appointed representative of the United States, I cannot negotiate binding trade agreements or mutual defense compacts on behalf of the United States. More broadly, the state alone may develop a foreign policy program for its people. I am entitled to take a personal dislike to Peru, but I am not entitled or empowered to rescind American recognition of Peruvian sovereignty or to end diplomatic relations with Peru.

Finally, the state is entitled to decide all questions relating to matters internal to its territory and people (i.e. domestic policy). At its broadest, this includes the development or amendment of the state's constitution, including the specification of the state's form of government and economic system. Assuming this groundwork is complete, *domestic policy* includes economic policy (including fiscal, monetary, and trade policies as well as commercial and financial regulatory policies); requirements for citizenship and suffrage; procedures for the election and appointment of government officers; military service requirements; social policy (including policies on education, health, and social insurance); the regulation of land and resource use; the development of infrastructure; etc. etc.

In sum: these secondary principles legitimate, contextualize, and regulate the realization, in individual states, of sovereign authority.

#### **D. Sovereignty violation**

To begin my discussion of sovereignty violation, I'll turn once again to Oppenheim:

The protection granted...by the Law of Nations finds its expression in the right of every State to demand that other States themselves abstain, and prevent their agents and subjects, from committing any act which

constitutes a violation of its independence or its territorial or personal supremacy.<sup>72</sup>

This passage identifies three aspects of state sovereignty that can be violated: independence, territorial supremacy, and personal supremacy.

Violation of a state's independence suggests annexation or conquest—the annihilation of the state and the incorporation of its territory and people into another state (or perhaps an empire). Violation of territorial supremacy suggests military invasion or covert intrusion—an uninvited border-crossing. As a matter of diplomatic practice, both of these fall squarely into the category of sovereignty violations, and it isn't difficult to see why. Violation of supremacy is somewhat more complex.

David Luban has suggested that (this sort of) sovereignty violation consists in installing a “second legislator” in a territory.<sup>73</sup> This, I think, is the right way to think about sovereignty violations that do not involve outright conquest and either do not involve or are not limited to territorial incursion. But what exactly does it mean to install a second legislator?

The American embargo of Cuba is a controversial but nonetheless useful example. American corporations were barred from doing business in Cuba when Castro's communist regime took power and expropriated property and assets belonging to American investors. The embargo persisted for three decades before being formalized in 1992 by the Cuban Democracy Act (which was itself strengthened four years later, by the Helms-Burton Act). These pieces of legislation essentially forced foreign corporations to choose between the United States and Cuba: companies with Cuban investments or trade partnerships were barred from commercial interaction with American firms. Moreover, the Helms-Burton Act designated foreign firms working in Cuba as “traffickers” of the property expropriated by Castro: as

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<sup>72</sup> Oppenheim (1947), 255.

<sup>73</sup> Luban (1980a) 164.

beneficiaries of these stolen goods, they were liable to be sued by Americans who lost investments in the 1959 revolution.<sup>74</sup>

The law was taken to be a sovereignty violation insofar as it effectively overrode foreign states' own policies with respect to Cuba, substituting the United States' policy of embargo. The United States, it was argued, was not entitled to punish foreign countries (via their firms) for their sovereign decisions to allow trade with or investment in Cuba. This is the sort of idea I believe Luban intends to capture with the phrase "installing a second legislator:" the effective but non-violent substitution of the will of the violator for the will of the sovereign. In the chapters that follow, we will take a closer look at how such substitutions might be accomplished.

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<sup>74</sup> See H.R. 927, Section 302, <http://thomas.loc.gov/cgi-bin/query/F?c104:1:/temp/~c104OuxKN7:e97379;>, Accessed 27 March 2010.

## Chapter 2. Authority and Autonomy

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The aim of the previous chapter was to provide an introduction to the concept of sovereignty; the aim of this one is to analyze it in more detail. Just to be clear: what I'll be analyzing here is sovereign authority (what states claim and exercise), rather than the institution of sovereignty (the collection of principles that organize states).

The place to begin analyzing sovereign authority is with an analysis of authority. The reason for this should be fairly obvious: an analysis of the concept *yellow cake* would presumably start with an account of the nature of cake. But as I will argue, authority (including sovereign authority) is best understood in terms of a deeper concept: autonomy.

### A. Authority

We should begin by distinguishing between a *position of authority* and the *exercise of authority*. For an agent to occupy a position of authority is for her to have been chosen (appointed, elected, hired, or otherwise designated) to accomplish some purpose or set of objectives that essentially include the direction or oversight of other agents' activities. For this agent to exercise her authority is for her to act in pursuit of those objectives, in ways and within constraints that her position legitimizes. The following section is devoted to fleshing out these brief definitions.

#### 1. *Legitimacy, power, and purpose*

I think that in order to make sense of the concept of authority, we need to situate it with respect to two other concepts: *legitimacy* and *power*. Intuitively, we



know that authority is related to these concepts somehow, but it is not easy to spell out the relations in detail.

It seems clear that positions of authority are normatively constituted: the exercise of authority is different from the exercise of mere (or “brute”) power in that the authority’s exercise of power is legitimated by her occupancy of her position. In other words, the occupant of a position of authority has at her disposal a set of norms by reference to which she can justify the taking of certain actions that might otherwise be prohibited (and which are prohibited to those who do not occupy the same or a similar position of authority).<sup>75</sup> To exercise authority is to engage in the *specially-legitimated* exercise of power.<sup>76</sup>

The concept *power* might be said to suffer from over-analysis—not at the hands of analytic philosophers, but certainly at the hands of post-modernists. As far as this project is concerned, *power* is simply the capacity to effect changes in the world. A slushie machine has the power to convert delicious syrupy liquid into delicious half-frozen slush. My dog, Ellie, has the power to race across a field after a bunny. Both Ellie and the slushie machine have the power to squish bugs, in that both are heavy enough to do so, etc. Persons have many of the same sorts of powers: we can squish bugs because we’re heavy enough; we can convert food into energy; we can race across a field after a bunny. We can also deploy power through the exercise of our wills: we can deliberate about what to do, make a choice, form a plan, and either

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<sup>75</sup> One mid-century sociologist argued, much in keeping with my account, that positions of authority, as institutions, “are generalized patterns of norms which define *categories* of prescribed, permitted, and prohibited behavior in social relationships for people in interaction with each other as members of their society and its various subsystems and groups. They are always *conditional* patterns in some sense. *If* you occupy a certain status in a social group or relationship, and *if* certain types of situation arise, you are expected to behave in certain ways with respect to the prescribed, permitted, or prohibited” (Parsons 1958, 203; emphasis in original).

<sup>76</sup> I use ‘specially-legitimated’ here because to say that authority is the “legitimate” exercise of power suggests that it is merely the *morally permissible* exercise of power. This would make every morally upright individual an authority. I take it that the “specially-legitimated” is a subspecies of the “legitimate.”

physically execute the plan ourselves or influence someone else to do it. This last kind of power (the power that persons have in possessing rational wills) is the important one for my purposes, so henceforward, I will define the exercise of authority as *the specially-legitimated exercise of will*.

It is an odd fact, and a bit of a puzzle, that not every occupant of a position of authority exercises authority. Even more puzzling is that it would seem to be possible for an agent to exercise authority without formally occupying the relevant position. (The first of these claims is a bit more intuitive, but I think there is a good case to be made for the second, as well.) This throws a bit of a wrench into the apparatus I've been constructing: to fully understand authority, we should examine and dispel these puzzles. Imagine the following scenario, which I'll call the *Substitute Case*:

Ginny is certified to teach world history at the middle school level. She submits an honest résumé to the North East School District (NESD), and is hired to teach in Room 104, according to unbiased hiring procedures, by people who are authorized to hire teachers for the district. But as it turns out, Ginny has a great deal of difficulty controlling her classes of unruly twelve-year-olds. Though she tries to deal with the children kindly, her sixth-grade classroom is always somewhat chaotic, and educational objectives are not being met.

It seems quite clear that Ginny's attempts to direct the activities of the children are legitimate: they are legitimated by her properly-acquired status as the sixth-grade world history teacher in the North East School District. So we would be mistaken if we said that she does not occupy a position of authority. But the purpose of Ginny's position is to designate and enable someone to effectively educate sixth-graders in the North East School District about world history (not to enable someone to cower behind a desk while assorted twelve-year-olds spit at one another). Insofar as Ginny does not succeed at educating the children (even though this activity is not only permitted by her position, but required by it), she fails to exercise the authority she has

in virtue of her position. The puzzle suggested by Ginny's situation is that an agent in a position of authority can utterly fail to fulfill the purpose of her position and somehow occupy it nonetheless.

Further imagine:

Nina is Ginny's sister. One evening, Ginny realizes that she simply cannot face going to school the next day. She calls Nina and begs Nina to take her place, just for the day. Nina is not a certified teacher; nor is she on the list of approved substitute teachers for the North East School District; nor is it customary or permitted for teachers to arrange for their own substitutes. But Nina has sympathy for her sister, and so she agrees, spending the evening reading over Ginny's lesson plans. And as it turns out, she's a terrific teacher. By treating the students with interest and respect, she quickly achieves control over the classroom and delivers competent, engaging lessons.

Nina's actions do not appear to be legitimate, as she is not certified to teach and has not been hired by the relevant people to substitute for her sister. But she effectively exercises her will in the service of educating NESD sixth-graders about world history: her actions fulfill the purpose of the teaching position in a way that Ginny's do not. Nina not only manages the classroom, she effectively teaches the lessons (rather than, say, keeping the children quiet by setting them to work making handicrafts that she plans to sell at a profit). She acts in precisely the sorts of ways that the properly-hired teacher is supposed to act, for the purposes the teaching position is supposed to facilitate. The puzzle suggested by Nina's situation is that an agent can, it seems, fail to occupy a position of authority, but exercise that authority nonetheless (by deliberately and effectively fulfilling the purpose for which the position exists).

To find our way out of these puzzles, let us back up a moment. It is certain that authority is normatively constituted: that's what makes it different from brute power. So, if I have authority in some sphere, it is because at least some of the norms that operate in that sphere have converged (or have been identified and invoked by

someone) to create a position of authority and to legitimate my occupation of that position.<sup>77</sup> Ginny's occupation of her position of authority is legitimated by the norms and contractual provisions governing the hiring and retention of teachers in the North East School District.

But part of the creation of a position of authority, clearly, is the specification of the position's purpose, and the identification of the sorts of actions the position's occupant may, must, or must not take, qua occupant of the position, in fulfilling that purpose.<sup>78</sup> We'll call these *prerogatives*, *mandates*, and *prohibitions* (respectively): they are the specific entitlements and requirements that constitute the authority's *scope for action*. As the teacher in Room 104, Ginny has mandates to take certain kinds of actions (teaching and managing the classroom), prerogatives to take other kinds of actions (e.g. administering some kinds of discipline), and prohibitions on taking other

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<sup>77</sup> The establishment of a position of authority is, in Lawrence Haworth's terms, the *institutionalization of a purpose*: "Institutions 'institute' the possibility of doing things that often, in the absence of the institution, simply could not be done. ... [T]he alternative to institutionalizing a purpose may well be to have no opportunity to incorporate that purpose into one's scheme of life. In large part, this is because the building up of the institution is the development of a technique for realizing the purpose" (Haworth 1986, 112).

<sup>78</sup> It is perhaps worth mentioning that in referring to an authority's 'purpose' I do not mean to imply that every position of authority provides a mandate to reach or achieve some specifiable end-point or state of affairs. Sovereign statehood does not, though some particular states do. Let me explain this a bit.

Raymond Plant, following Michael Oakeshott, draws a useful distinction between *nomocratic* and *telocratic* states (see Plant 2010, Chapter 1, particularly pp. 5-7). The purpose of a nomocratic state is simply to ensure the rule of law in perpetuity, while the purpose of a telocratic state is to achieve some socially valued end. The modern liberal state is, or at least purports to be, nomocratic; "telocracies" are willing, by definition, to subvert the rule of law in pursuit of whatever purpose the state takes itself to be bound to promote.

Plant's discussion explores the intriguing claim, made by some neo-liberal thinkers, that the welfare state is a telocracy (and problematically so). I do not have space to enter into that discussion here; for my purposes, it is enough to make note of the distinction between nomocracy and telocracy and to explain that by 'purpose' I do not intend to denote a necessarily telocratic or illiberal purpose. Positions of authority that require the steady improvement of, or even simply the maintenance of, an existing state of affairs are not in my view less "purposeful" than positions that exist to bring about a new state of affairs or a measurable outcome.

For a useful discussion of how states and systems of states have understood the purpose of state authority differently in different places and time periods, see Christian Reus-Smit's *The Moral Purpose of the State*. Reus-Smit's use of the term 'sovereignty' in *Moral Purpose* is extremely misleading, in my view; but the book is essential reading for anyone interested in thinking about what justifiable purposes political authorities might be taken to have.

kinds of actions (e.g. requiring the children to make handicrafts to sell for profit or allowing the children to run amok)—all in the service of instructing the NESD sixth-graders in the subject of world history. That is, for the occupant of the teaching position that Ginny occupies, teaching world history effectively is not an optional activity that she might undertake if she's in the mood. The teacher is *mandated* to exercise her will—in the appropriate ways—to that end. Otherwise, she fails to fulfill the purpose for which her position exists.

The point here is that the norms legitimating an agent's occupation of a position of authority constitute only one of at least two bundles of norms that apply to that agent qua authority. She is also subject to norms that define the purpose of her position and her scope for action (her prohibitions, mandates, and prerogatives). It stands to reason, then, that an occupant of the position can be legitimate according to one set and not the other. Ginny's occupation of her position is legitimated by the relevant norms (because she was hired by the right people in the prescribed way, etc.), but her actions in the classroom are not legitimated by the norms dictating her position's purpose and her scope for action. Nina is in the opposite situation: her occupation of the position of teacher in Room 104 is not legitimate, but her actions in the classroom are (because they are consistent with the purpose of her position and with the mandates and prerogatives the position confers).

What this discussion suggests is that authorities are multiply-legitimated: the occupant of a position of authority can be illegitimate in one respect without being *fully* illegitimate. Let's call Ginny's brand of legitimacy *formal legitimacy*: it is what an agent has when she has come to occupy a position of authority through the proper channels and processes. We'll call Nina's *efficacy*: this is the sort of legitimacy an agent has when she fulfills the purpose of a position of authority in accordance with the relevant mandates and prerogatives. These two types of legitimacy are not

mutually exclusive, of course: a teacher who can boast both the proper credentials and skill in the classroom is both formally legitimate and efficacious.

Consider now a third chapter in the Substitute Case:

Alison possesses credentials equivalent to Ginny's. When Ginny is fired from the North East School District for allowing her sister to take over her class, Alison honestly applies for and unproblematically wins the job. Alison, as it turns out, controls her classroom quite effectively, and the children in Room 104 learn the relevant material. But Alison achieves this result by hitting misbehaving children very hard with a ruler, and intimidating all the children into keeping quiet about her abusive punishments.

Alison has been properly hired, and she effectively controls her classroom and delivers lessons. She is, therefore, both efficacious and formally legitimate. But her methods are morally reprehensible. Both Ginny and Nina, it seems, possess a form of legitimacy that Alison lacks: *moral legitimacy*. We can say that an agent occupying a position of authority has moral legitimacy if she abides by the moral norms that apply to her position (understanding this to include both broad moral norms and any that might be specific to the position held). It is important to bring out this point so it is clear that efficacy and moral legitimacy are at least to some degree distinguishable.

If any of this is hard to swallow, I suspect it is the claim that Nina is a legitimate authority in virtue of being efficacious—that she exercises authority, rather than mere power. Let me provide one more argument in favor of this claim, in the form of a fourth chapter in the Substitute Case:

One day, an intruder named Abigail enters Room 104 through the window. She bars the classroom door so the children cannot get out, and tells them to sit very still and be quiet, “or else.”

Clearly, Abigail's behavior is morally reprehensible, and obviously, she hasn't been hired to teach the children. She is neither formally nor morally legitimate. But she

does exercise her will in the classroom, just like Nina and Alison. Does this mean that Abigail exercises authority in Room 104?

The answer, clearly, is *no*. Nina, Alison, and Abigail do share a feature: all three effectively exert their wills in the classroom. But Alison and Nina exert their wills in order to fulfill the purpose of the position of sixth-grade world-history teacher. Abigail exerts her will for her own (unnamed) purposes; her will is not even nominally aimed at the achievement of the objectives that the teacher in Room 104 is supposed to achieve. This distinction should help to make it clear that what Nina has *is* a form of legitimacy.

We can sum up the foregoing discussion as follows. First, an agent formally occupies a position of authority only if her assumption of the position takes place in accordance with the norms governing how and by whom the position may be assumed. But an agent's formal occupation of a position of authority guarantees neither her efficacy nor her moral legitimacy. Second, an agent can fail to formally occupy a position of authority, but exercise the authority associated with that position, nonetheless. Such an agent—efficacious but informal—is a *de facto* occupant of the position of authority. Her situation is distinct from that of an agent who exerts her will in the relevant sphere (e.g. Room 104), but without aiming at or successfully fulfilling the purpose for which the position exists. The latter sort of agent (e.g. Abigail) exercises only brute power.<sup>79</sup> Finally, an authority exhibits moral legitimacy if her exercise of authority falls within the moral constraints and permissions to which her position is subject.

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<sup>79</sup> That is, the latter agent exercises only brute power with respect to the position of authority at hand. There is nothing to prevent that agent from formally occupying some other position of authority, or informally exercising the authority of some other position.

## 2. Domain, height, and scope

I have already introduced the concept *scope*: the set of mandates, prohibitions, and prerogatives that guide and constrain authorities (i.e. occupants of positions of authority) in their exercise of authority. But this concept is linked to two others: *height*, and *domain*. Understanding the relations among these concepts is the next step in analyzing authority.

Positions of authority, like the world-history position in the Substitute Case, are indexed to what I will call *domains*. An authority's domain is the arena in or to which her authority applies: outside the borders of her domain, an authority is not an authority.

The borders of an authority's domain are specified primarily in terms of the population over which she has authority, and secondarily in terms of whatever determines who is in that population. Ginny's domain is her classroom of students, as determined by the process that assigns students to different classrooms. The domain of a state is its body politic, as determined by birth in and immigration to the state's geographical territory. Domains can overlap: for instance, the domain of the special needs teacher at the North East Middle School includes a few of Ginny's students. And many domains are contained within larger domains: Ginny's domain is contained within that of the principal of the North East Middle School.

The *height* of an authority relative to some domain is determined by the size of its scope for action with respect to that domain: the magnitude of its purpose, the breadth of its prerogatives, the substance of its mandates. The *supreme* authority in a domain is the highest—the authority with the broadest scope with respect to that domain. Notice that this means that an authority in some domain  $D$  might be supreme in  $D$  even if  $D$  is part of some larger domain  $D+$ . For instance, the Pope is a religious authority with an immense domain, encompassing all Roman Catholics, in every



country on earth. But this does not mean that the Pope is the supreme authority in Italy (more correctly: the supreme authority over the people of Italy). The Pope's scope for action in Italy is limited in comparison with the scope claimed by the Italian state. This is as the principle of sovereignty would have it: with respect to any given body politic (and by extension, the territory it claims as its own), the state has the broadest scope for action and is therefore the highest—the supreme—authority.

### *3. Special legitimation and responsibility*

It might be wondered, at this point, why legitimating norms are taken to be specially relevant to authority. Imagine that I go to the fridge, remove some cheese, and eat it. Even this very simple act is governed by legitimating norms: that is, whether my extraction of cheese from the fridge is legitimate depends on whether that act adheres to a few relevant norms (mostly moral norms). Is this my fridge? Is it my cheese? Have I promised someone that I would not eat this cheese? Am I eating it knowing that it is intended for consumption at a dinner party later? All human action must be legitimated by a variety of norms in order to be justifiable: the actions of an authority are not unique in this regard. So what, specifically, is the difference between the legitimation of an authority and the legitimation of a regular old agent?

The answer is suggested by the definition of *position of authority* I initially provided: “For an agent to occupy a position of authority is for her to have been chosen...to accomplish some purpose or set of objectives *that essentially include the direction or oversight of other agents' activities.*” This last, italicized portion is something I have not yet explained.

Compare the following two agents. The first is the cheese-eater, whose consumption of the cheese is legitimate if it does not violate norms governing ownership, promising, courtesy, etc. The second is a mail-sorter for a medium-sized

company called Maple Splendor. While both are subject to norms (being a good mail-sorter requires accuracy, efficiency, and honesty, for instance), the mail-sorter, unlike the cheese-eater (qua cheese-eater), has been chosen, via some suitable choice procedure, to accomplish a specific set of objectives: sorting and delivering mail. What the mail-sorter has that the cheese-eater lacks is a *position of responsibility*: a purpose for which she has been tapped, and in virtue of which she has particular mandates, prerogatives, and prohibitions that pertain to her task. (For instance: she is, perhaps, required to come to work at seven o'clock; required to sort and deliver mail; prohibited from opening the mail; permitted to separate junk mail from important mail only for the administrative assistants who are polite to her; permitted to eat for free in the company cafeteria; etc.)

Next, compare the mail-sorter to her boss, the Director of Support Staff. The director has been chosen to accomplish objectives relating to the management of Maple Splendor's secretarial workers and other non-custodial support staff (these persons constitute her domain). Her scope for action includes hiring new staff to fill open positions, firing employees who fail to accomplish important objectives, holding regular meetings of support staff to keep them up-to-date on company policy, etc. She also holds a position of responsibility. But her position of responsibility is special, because it centrally involves the direction and oversight of other persons and their activities: her position is one of authority.<sup>80</sup>

What's important about the fact that her position involves the direction of other persons and their activities is that in her absence, those in her domain might very well choose and act differently from the ways they in fact choose and act. For instance, she can call a meeting and the people who report to her have to show up at the designated time. Absent the influence she (the director) exerts in virtue of her position, the mail-

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<sup>80</sup> The set of positions of authority, then, is a subset of the set of positions of responsibility.

sorter might choose to continue sorting mail rather than attend a meeting. The director can fire someone who isn't performing well. Absent her influence, a low-performing employee might choose to continue receiving a paycheck from Maple Splendor in return for her efforts (such as they are). In her presence, those in her domain are less free to choose and act as they will.

Given that we value free choice and action, the only justification for placing someone in a position of authority could be to ensure an outcome the achievement of which is *worth* the limitations placed on the domain members' freedom (and which is very unlikely to be achieved if the domain members are allowed to choose and act freely).

This suggests that special norms legitimating an objective and the actions taken in the service of achieving it are required when the achievement of the objective requires the kind of interference into the lives of others that would, absent the legitimating norms, count as violations of their free agency (i.e. their autonomy). In other words: the norms that constitute a position of authority specify the purposes for which, and the ways in which, the autonomy of agents can justifiably be overridden by the occupant of the position.

This conception of authority has three implications concerning the responsibilities generated by the existence of authorities in our social world: two for authorities themselves and one for agents more generally. The first is that if an agent occupies a position of authority—formally or de facto—she has a serious responsibility to avoid overstepping her bounds. To act in ways, or for purposes, that are not legitimated by her mandates and prerogatives, is to straightforwardly violate or diminish the autonomy of those in her domain. To attempt to exercise authority outside her domain is likewise a violation, and an exercise of power only. The second is that if an authority fails, through incompetence, to fulfill the purpose of her position

of authority, then she is culpable for the purposeless violation or diminishment of others' autonomy.

The third concerns other agents' relations to agents in positions of authority. In the Substitute Case, the only authority unable to fulfill the purpose of the position she occupies is Ginny, and her failure is due to incompetence. But we would do well to allow that competence alone does not determine an authority's efficacy. If she is hindered by a dearth of opportunities to act in the service of fulfilling her position's purpose, or if her efforts are thwarted by other agents, she will be ineffectual despite her competence. I will return to this point later in the chapter; for now: this suggests that the violation or deliberate diminishment of an authority's autonomy (not her own, personal autonomy, but her autonomy qua authority) risks, at minimum, jeopardizing the authority's ability to fulfill the purpose *for which others' autonomy is being limited*.<sup>81</sup>

With this, I think we have reached the point at which we will need to understand autonomy and autonomy violation if we wish to make further progress in understanding authority.

## **B. Autonomy**

### *1. Raz on autonomy*

There are a number of conceptions of autonomy in the literature on the subject,<sup>82</sup> but I will begin with what I think is the simplest and most intuitive. This conception is given clear articulation by Joseph Raz.

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<sup>81</sup> At worst, such a violation could *directly* violate the autonomy of those in the authority's domain: if through her violation of an authority's autonomy an agent imposes upon domain members additional constraints on their freedom of action, then she straightforwardly violates their autonomy, as well.

<sup>82</sup> It is perhaps worth mentioning that I will not be considering claims about *metaphysical* autonomy, i.e. claims about whether free will is compatible with physical (or theological) determinism. Questions about this sort of autonomy are prior to, and in practical terms have nothing to do with, questions about the sort of autonomy that can be increased by adding options and violated through coercion.

Autonomous agents, in Raz's view, "are those who can shape their life and determine its course;" they "are part creators of their own moral world."<sup>83</sup> Autonomy, on this conception, is possessed by an agent to the extent that her decisions and actions are expressions of her will rather than expressions of someone else's will or reactions to urgent "personal needs" (e.g. hunger).<sup>84</sup> For Raz, then, autonomy requires a will operating in (a) the absence of coercion and (b) the presence of decent options.<sup>85</sup> Coercion violates a person's autonomy by subordinating her will to that of her coercer.<sup>86</sup> The coerced agent's life, so far as the coercion penetrates, is not her own; it is being authored by the will of another. Moreover, if the only choices an agent ever gets to make involve ways of getting adequate nutrition and medical care (or ways of coping with a lack of same), her life will not be self-authored in any substantive way. A lack of options has the effect of frustrating an agent's will: though no one in particular is preventing her from doing as she wishes, she is nonetheless prevented.

I think Raz's account requires one small amendment, in that it is not clear that coercion is the only kind of autonomy violation. Exploitation, for instance, is often classified as a violation of autonomy; and I don't want to foreclose that possibility. Autonomy, then, is dependent on the absence of coercion,  $x_1, \dots$ , and  $x_n$ , where each  $x$  stands for a particular kind of autonomy violation.<sup>87</sup> With this amendment, I am inclined to endorse Raz's conception of autonomy: an agent's will can operate freely only when (a) unfettered by coercion or any other sort of violating influence, and (b) in the presence of a decent set of options.

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<sup>83</sup> Raz (1986), 154.

<sup>84</sup> Raz (1986), 155. Raz takes personal needs to encompass more than mere biological necessity (see 152-3), but for the purposes of my project I do not think I need to take a stand on what personal needs are taken to include.

<sup>85</sup> Raz (1986), 155.

<sup>86</sup> Raz (1986), 154-5.

<sup>87</sup> Please excuse the notation; it really does seem like a useful way to express my meaning here.

But upon reflection, I am not certain that Raz's two criteria are ultimately distinct. Why would we care about autonomy violation if it has no effect on an agent's options—on the possibilities for action available to her? An account of autonomy violation has to wait until the next chapter, but I believe the task now at hand is to clarify the relation between one's autonomy and one's option set.

We value autonomy, according to Raz, because we value persons' ability to author our own lives: to exercise our wills freely. Having more (and better) options would seem to increase the likelihood that one's choices genuinely reflect one's will, rather than a painful compromise between will and circumstance. To put it another way: options are paths from agents to aims and objectives. In order to reach an objective, an agent needs both a path to that objective and the will to take the path. In the absence of the path, the will to achieve the objective is frustrated and the agent is, at least to some extent, unable to work her will as she freely chooses. She is, therefore, less than fully autonomous.

From this basic commitment, however, one could build two distinct accounts. One is what we might call a "threshold" account (Raz himself held such a view). On a threshold account, an agent's option set must meet some threshold of sufficiency in order for it to have the value that we attach to autonomy. Agents whose option sets' size and quality fall below this threshold have claims on others for assistance in broadening their field of options.

I favor a second account, which holds that the size and quality of one's option set determines *the extent to which* one is autonomous. An option lost decreases autonomy, and an option gained increases it.<sup>88</sup> For instance, the choice of an agent, Louise, who decides to attend a particular college, is *more* autonomous if she has been admitted to multiple schools she would be happy to attend and her family can afford to

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<sup>88</sup> This claim is subject to a few qualifiers, discussed later in the chapter.

pay for whatever school she chooses. Her will, in this case, is entirely responsible for her choice: she need not compromise her will in the face of financial or other obstacles.

One might object to this account on a number of grounds; much of the remainder of this chapter is devoted to answering these objections.

## *2. Autonomy, luck, and respect*

The first significant objection to this model is that if we admit that persons with fewer choices are less autonomous than those with more, autonomy turns out to be closely allied to favorable luck (and material wealth). It might seem insulting to suggest that someone who makes the best choices she can from the meager options available is not very autonomous, while someone who chooses from a galaxy of glittering options is highly autonomous (regardless of how well she chooses). People may have a limited range of options and yet make conscientious, thoughtful decisions they are proud to own and answer for; it seems like a mistake to reduce autonomy to luck and privilege.

I think this objection, when made, stems from one of two mistakes about the nature of autonomy.

The first mistake is to conflate autonomy and integrity. Imagine that a student from a working-class background (call her Meena) is admitted to her dream school, but is not offered more than minimal financial aid. She is also admitted to a decent state school that would cost her family much less. Deeply committed to limiting the financial hardship faced by her family, Meena makes the difficult decision to attend the state school. Some might suggest that Meena's decision is every bit as autonomous as Louise's: Meena's decision expresses a deep and laudable

commitment to her family, and we would insult her if we said she was less autonomous than the wealthy, fortunate Louise.

But there is a serious problem with this idea. It would seem to allow that a decision made under extreme duress could still be autonomous as long as it reflected the chooser's deep commitments. Imagine that an American submarine officer, Megan, takes her own life rather than reveal missile launch codes to a renegade petty officer who wishes to attack a nearby Russian gunboat in order to start an international incident. This decision—to take her own life in order to save the lives of those on the gunboat, and perhaps those of many more who might have died if the incident had escalated—is a choice that expresses the very best of who Megan is. But while her decision shows a great deal of integrity and moral courage, it is a coerced decision. It cannot be that her decision is both paradigmatically autonomous (because it demonstrates Megan's moral courage) and paradigmatically non-autonomous (because it is coerced). This problem is solved if we recognize a difference between autonomy and integrity, where integrity is a measure of how well an agent's considered values inform her behavior and autonomy is a measure of the extent to which an agent is able to realize her will in the world. Returning to the student cases: the fact is that Meena would choose a different school if circumstances did not make it necessary for her to take cost into account; Louise may choose any school. We don't know anything about Louise's character based on the story I've told here, so perhaps Meena and Louise both have a great deal of integrity. But Louise is more autonomous.

The second mistake is to conflate autonomy with the capacity for autonomy. Moral theorists since Kant have bound autonomy very tightly to moral worth and respect: an autonomous decision is one to be respected (i.e. taken seriously and judged according to whatever moral principles we take to be the right ones). A judgment that someone is less than fully autonomous is, therefore, sometimes taken to



imply that we can treat that person in a paternalistic or otherwise disrespectful fashion, ignoring her decisions as unworthy products of a lesser will. This putative implication prompts a rebuke from advocates for the poor and marginalized: to say that an abused spouse lacks full autonomy, for instance, is to show disrespect to someone who already suffers profound humiliation. It is to confirm or support her abuser's view of her as a lesser being. To say that poor persons lack autonomy is to suggest that we need not listen to their concerns or alter our behavior when it harms them.

But why, exactly, is autonomy bound *so* tightly to respect, so that any hint of a judgment that someone is not fully autonomous (or that some decision is not autonomous) is taken to convey disrespect—even a denial of the moral worth of the entire person? I think it is because there are certain populations whose members are not generally allowed to exert their wills in the same way as the rest of us, and the reason they are limited in this way is because they are taken to lack autonomy. Children, the severely mentally ill, and the mentally disabled are paradigm cases of persons whose choices are judged to be less than fully autonomous (or not at all autonomous). Their choices may be overridden if their caretakers believe they are not choosing safely or wisely. Much of our anxiety surrounding a judgment that someone is less than fully autonomous is due, I think, to a fear of suggesting that a mentally capable adult is relevantly like a child or a mentally ill or mentally disabled individual.

But this worry rests on a very obvious mistake: our concerns about the limited autonomy of children and the mentally impaired have to do with what would be more accurately termed *capacity for autonomy*. Autonomy is about willing, so it stands to reason that any model of autonomy must require that the agent in question is a competent willer. At minimum, this has to mean (1) that her lived experience tracks reality in a fairly reliable and comprehensive way; (2) that she is capable of processing her lived experience through the accurate use of concepts (e.g. *tomato*, *bear*, *water*;

also *food*, *danger*, *sad*); and (3) she can deploy the concepts she possesses in ways that reflect an understanding of relations like *cause/effect* and *means/end*.<sup>89</sup> In other words: she must be able to recognize and respond appropriately to others' reasons for acting as they do; moreover, she must act for reasons that others can recognize and to which they can respond appropriately. Children and mentally impaired persons generally lack "reasons-responsiveness," or possess only a rudimentary or partial responsiveness to reasons.<sup>90</sup>

So, when we determine that an agent's expressed wishes can be overridden, it is sometimes (I would even say *usually*) because that agent lacks the capacity for autonomy (as in the case of a child who expresses a desire to stay overnight at the zoo). And sometimes, when we make a judgment that an agent is not morally responsible for some action, it is because that agent lacks the capacity for autonomy (as in the case of a mentally disabled individual who commits a crime). In some cases, that is, we don't even make it to the questions of whether the agent was coerced and what sorts of options she had. In such cases, while we are clearly obligated to respect the *person herself* (e.g. through listening to her, taking her feelings and needs into account however we can, etc.) we are not bound to respect *her decisions or actions* in the way that we would be if she were fully autonomy-capable. So, we would not take a child's stated preference for staying at the zoo overnight as a reason, to be entered into a serious deliberative calculus, for staying at the zoo overnight. Likewise, we might not take the crime of a mentally disabled person to be evidence of moral blameworthiness of the same sort attributable to a competent committer of a similar crime. If a person *is* judged to have the capacity for autonomy, we then move

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<sup>89</sup> Some might want to add the possession of a basic moral theory—a reasonable sense of right and wrong, that is—to this list. I think this is probably right, but it does not bear on the analogy with sovereignty, so I will not take a strong position on the issue.

<sup>90</sup> Thanks to Andrei Buckareff for helpful comments on this account of capacity for autonomy.

on to ask whether her decision was *actually* autonomous—free from violating influences and made in the presence of a decent set of alternatives.

In sum: the suggestion that it is disrespectful to judge that a mentally competent person is less than fully autonomous because of her small option set rests on confusion about why we value autonomy. Autonomy is valuable not because it is reducible to moral courage or integrity, but rather because we think those who are *competent* to make free choices ought to be able to make them.<sup>91</sup> To say that Meena's decision is less autonomous than Louise's is merely to take note of the fact that Meena has fewer options (and so her decision is less reflective of her unfettered will than Louise's); it implies nothing about either her integrity or her capacity for choice.

All of this being said, it would be foolish to think that options are not subject to the law of decreasing marginal utility. According to this principle, the more an agent has of some good, the less each additional unit of it is worth to her. This is difficult to argue with: if I have a net worth of ten million dollars, one additional dollar is worth far less to me than it is to someone with only a few thousand dollars. Similarly, if I always have clean, fresh water at my disposal, I am unlikely to value a cup of such water nearly as much as it will be valued by someone suffering from dehydration and thirst. Louise enjoys more autonomy than Meena, but both enjoy much greater autonomy than someone for whom college is entirely unavailable. An agent, Laura, who applies to ten jobs with no strong preference for any of them gains a *little* autonomy when she receives her seventh offer letter, but not nearly as much as her friend Kristin gains when she receives her first.

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<sup>91</sup> We should observe, in conjunction with this, that sometimes respecting someone's autonomous decision means punishing him for what he has chosen to do. A free choice is worthy of one kind of respect (demonstrated by taking the choice seriously, and the chooser, as owner of the choice, seriously, as well); a deeply authentic choice is worthy of another kind (the kind afforded to people who think and act coherently, with rational integrity); a moral choice is worthy of a third kind.

It would be equally foolish, I think, to fail to recognize that similarly placed agents might value the same new option quite differently depending on their dispositions. Imagine that a traveling businessperson, Mick, meets a man in the airport who offers to hire him away to a new company. But Mick is not tempted by this offer: he is loyal to his current company and enjoys his job. His business partner, Keith, on the other hand, is enormously tempted by the same proposition, even though he and Mick have very similar jobs, salaries, and other responsibilities. I think it would be odd to say that Mick somehow doesn't really have the option to take the new job, just because he doesn't wish to select it. But Mick's case does suggest that we can distinguish between options that *materially* alter an agent's autonomy and those that only *nominally* alter it.<sup>92</sup> The man's offer nominally enlarges Mick's option set (and thus nominally enhances his autonomy), just like any other option. But because he is uninterested in changing jobs, the option doesn't alter his autonomy materially: it doesn't *matter* in his deliberations about what to do. The same option does materially alter Keith's option set.

Together, these qualifiers suggest that in evaluating changes to an agent's option set, we must be mindful of a new or lost option's real effect on the agent's ability to exercise her will in the world; simply recording "plus-one" or "minus-one" in our option-set ledger will be insufficiently sensitive to the effects of real options on real agents.

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<sup>92</sup> It might be suggested that this qualifier is not distinct from the first, but I believe it is. In the case of Laura and Kristin, just discussed, Laura receives one additional option of a kind very similar to six that she already has. The value of that seventh offer is lower than the value of a qualitatively similar option to a differently-situated agent—her friend Kristin, who has only this one offer to consider. In the case of Mick and Keith, on the other hand, both agents are, objectively speaking, similarly-situated: they have similar jobs and salaries. The presentation of the same new option to each of them should, if we consider only the law of diminishing marginal utility, affect their option sets the same way. But because their subjective assessments of the new option differ, it affects them differently. This is what the second qualifier is intended to capture.

### 3. *A descriptive account*

A second significant line of objection to my account compares it to the threshold account and determines that mine provides no way to assess an agent's autonomy at-a-time—only to track increases and decreases in options over time. This defect, it might be argued, leaves us unable to determine when an agent is not sufficiently able to author her own life and thus has a claim on our assistance in enlarging her option set.

This objection, however, overlooks the fact that my account is descriptive, while the threshold account is normative. The two accounts are indeed distinct, but they are not incompatible. That is: I defend the claim that an agent's autonomy varies more-or-less directly with the size and quality of her option set. This is a claim about how autonomy “works”—and it is entirely compatible with the normative claim that there is a morally significant threshold (or even more than one such threshold) somewhere on the spectrum between having no options and having the world at one's feet (so to speak). The specification of any broadly applicable thresholds for persons is beyond the scope of my project, but I am entirely in agreement with those who say that abused spouses and very poor persons—far from being beneath our concern due to their lack of autonomy—are entitled to our assistance in enlarging their option sets. My project is just different from one devoted to the defense of this claim.

My opponent might then argue that my account *is* normative, insofar as I see newly-gained options as good for agents and option losses as bad for agents. But this argument, too, is mistaken. I am operating on the assumption that autonomy—self-authorship—is a good. In arguing that self-authorship (which happens to be a good) is enabled, in a simple and direct way, by the possession of options, I am making a claim only about the mechanism by which some good can be increased or decreased. This shouldn't be any more controversial than the claim that three cups of drinking water is

better than two cups due to the facts that (1) drinking water is a good that can be increased or decreased in discrete increments like cups and (2) *three* is more than *two*. An *option* is, of course, not quite as easily measured as a cup of water. But I think we can coherently talk about gaining and losing identifiable options: if I receive a job offer from the University of Northern Somewhere, I gain the option to work at that university. If funding for the position is withdrawn, I lose that option.

#### *4. Autonomy and morality*

A third significant line of objection picks up where the last objection left off. I've said that greater autonomy is to be found in a larger option set, but, it might be argued, I have said little about the relative value of different sorts of options. In its most likely form, this objection points out that my account doesn't distinguish among options agents are morally required to take, options agents are morally permitted to take, and options agents are morally prohibited from taking. Is an agent's autonomy enhanced when she gains an option to do wrong? Is it diminished if she later loses that option?

For instance, imagine that our traveling businessperson, Mick, is married. On a business trip, he meets another traveler, Bianca, in a hotel. Bianca informs Mick that he has the option to go to bed with her. According to the understanding between Mick and his wife, this act of sexual infidelity would be very wrong. Does meeting Bianca and acquiring the option to sleep with her make Mick more autonomous? The answer I give is *yes*.

We value autonomy because we value the ability to author our own lives through the free exercise of will: autonomy *just is* that ability. And as I've said, a larger option set enables autonomy because it provides more pathways to more of the objectives one might have: it makes it more likely that one's will can be exercised

without significant compromise. While different agents will certainly view similar options very differently depending on their existing option sets and underlying dispositions (recall the distinction between *nominal* and *material* alterations to an agent's option set), at the end of the day, an option is an option. To say that options to do wrong are not real options, or that the only real will is a good will, is disingenuous.

It might be objected that this view embraces a repulsive vision of the free human will. On this view, it could be argued, the Raskolnikovs and Roarks and Ted Bundys and Columbine killers of the world are the most autonomous, because they do not fear to choose even the most self-serving and monstrous option, if it truly reflects their wills. But this objection is deeply mistaken: it confuses *having* an option with *taking* the option. All of us do have options to assault and murder others: we have a hundred opportunities a day. But for most of us, these options do not materially help to enable the exercise of our wills because we have no interest in selecting them. That is, we refrain from killing others not because we're afraid to unleash our murderous wills, or because we never have any opportunity to do so. Rather, we don't kill others because we *do not have* murderous wills. The free choice to value persons and avoid murder is every bit as autonomous as the choice to engage in it. (This is why the self-aggrandizement of would-be *übermensch* types is so tragically absurd: their belief that assault and murder are somehow "freer" actions than the actions the rest of us choose is entirely baseless.)

But there is a deeper problem. If an agent's autonomous will *is* to do wrong (e.g. to murder someone), then intuitively, the arrival of an option to murder someone seems like a bad thing: it will enable that agent to commit murder. But as I argued just a moment ago, I have been assuming that autonomy—self-authorship—is a good, of which more is better. This is a problem that ought to be addressed.

The proposition that the arrival of an opportunity to murder someone (i.e. to do wrong) could count as a good for an agent breaks down into two further propositions: first, that such an option could *materially* enhance an agent's option set; and second, that an enhanced option set is always a good.

First, it should be clear that on my view, an option to do wrong does materially enhance the option set of an agent with a will to do wrong. Recall our traveling businessmen, Mick and Keith. Imagine that Bianca has told each man separately that he is now the lucky possessor of the option to go to bed with her. Mick and Keith are both married and expected to be faithful. Mick, let's say, is not tempted to take the option Bianca proffers: he loves his wife, and moreover, he does not find monogamy to be difficult. Bianca's offer enhances his option set, but only nominally. But Keith, though he, too, loves his wife, has a hard time remaining faithful. He figures that what his wife doesn't know won't hurt her, and he is quite attracted to Bianca.

Because Bianca's offer matters in Keith's deliberations about what he will do, her offer materially enhances his option set. That is the answer my framework provides, and I think it is the right answer: the option straightforwardly opens a path to an objective he has (to go to bed with beautiful women like Bianca).

The proposition that an enhanced option set is always a good is the more difficult of the two to accept. But I will bite the bullet, once it is made clear that it is not, in the end, as big a bullet as it initially appears. Let us consider the claim that clean, fresh water is a good for human beings. This claim certainly seems to be true. But as a matter of fact, it is possible to drown someone in clean, fresh water. Does this fact render the claim false? I think it does not: what the fact suggests is that while water is a good, it is not thereby rendered immune to evil uses. Water is not an unrestricted or *all-things-considered* good: its goodness is "defeasible" by some uses to which it may be put. Alternatively, one might decide to say that water is *not* a good



for human beings—that it is a morally neutral means to a variety of ends, many of which are good. But this, it seems to me, does not capture the importance of clean, fresh water to human beings: water is not an instrument we can take or leave as we wish, or for which we could substitute something else if it were all to vanish from the earth tomorrow. To say that water is a good for human beings is to acknowledge its pervasive, intimate, and crucial role in supporting human life.

Strange though it may sound, I think we can say very similar things about autonomy: self-authorship is also a good for human beings, but the activity of authoring one's own life is likewise not immune to evil uses. Autonomy is not an all-things-considered good, but to say that it is a neutral instrument by which we achieve evaluable ends is to fail to appreciate the intimate and vital importance to autonomy-capable agents of living a life we choose. So, I am willing to say that autonomy is a good (and that the enhancement of an agent's option set is always a good), provided it is understood that this goodness can be defeated, in particular cases, by the badness of some of the uses to which the human will is put.

Finally, it is perhaps worth reiterating the point that an agent must *take* an option in order to realize its potential for either good or ill; options do not force their own selection on agents. When an agent does wrong, the wrong lies in her will, not in the options available to her.

##### 5. *Frankfurt on autonomy*

A fourth objection argues that my account does not really explain what autonomy *is*—only what is required for its exercise (options). That is, my account says little about what it means to exercise one's free will. This is a fair point, and I shall now undertake to remedy this defect.

Harry Frankfurt is well-known for his view that autonomy consists in the endorsement of one's own motivations and actions.<sup>93</sup> For someone to be fully autonomous in Frankfurt's sense, she must have the capacity and the disposition to reflect on her desires, distinguish between those she approves of and those she wishes to change, control, or suppress, and the strength to act only on desires she endorses. This analysis of autonomy is so far removed from (e.g.) Raz's analysis that it has been alleged that Frankfurt is simply talking about something else (like integrity or character) and misleadingly calling it 'autonomy.'<sup>94</sup> But what Frankfurt is suggesting, I think, is a point that Kant also understood: autonomy is what Aristotle might have recognized as a mean between two extreme conditions.

The condition of autonomy, that is, sits between what we might call *domination* on one side (being mastered entirely by another) and *dissolution* (being entirely "un-mastered") on the other. If an agent is dominated, she is not the author of her own life: her actions serve the will of her oppressor, not her own will. But (as Frankfurt compellingly argues), a dissolute agent is no more author of her own life than a dominated agent.<sup>95</sup> Depending on the cause of her dissolution, her option set might be smaller (as in the case of a moderately addicted alcoholic) or larger (as in the case of an extremely unmotivated but otherwise unencumbered person), but it makes little difference either way: she does not deliberately choose to take any particular option. She is capable, in some real sense, of deliberating and weighing reasons; she just doesn't care to. Her actions do not serve her will because she barely has one.

The autonomous agent, though, is neither dominated by another, nor completely "un-mastered." She is, rather, the master of herself. In the main, her

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<sup>93</sup> See "Freedom of the will and the concept of a person" in Frankfurt (1988).

<sup>94</sup> Bernard Berofsky, for instance, argues that Frankfurt's view is too focused on the character and motivation of the willer and insufficiently attentive to the importance of the will itself. See Berofsky (1987), 41-44, 160-165.

<sup>95</sup> Frankfurt refers to such persons as "wantons." See Frankfurt (1988), 16-19.

choices reflect the fact that her life is her project: she is the author of her own narrative, the director of her life. Autonomy is thus freedom to act, and responsibility for the direction of that freedom, at once.<sup>96</sup> This condition of being one's own master is what makes autonomy the foundation of responsibility (including moral responsibility). As Frankfurt helps us understand, autonomy is not simply freedom from domination (in which case someone else is responsible for one's actions), but the active, deliberate mastery of (and consequent responsibility for) oneself.<sup>97</sup>

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<sup>96</sup> Kant, of course, is the originator of the modern concept of autonomy, and he argued for something very similar to this conception. Kant argued that as beings endowed with rationality, we cannot be meant to act on whim and instinct, like lower animals. Nor can some be intended for subjection to others on the grounds that some of us are incapable of determining for ourselves what we may and ought to do: we all possess the same rational faculty and are all, therefore, able to "access" the moral law through the exercise of reason. The option that remains is self-rule: the free and deliberate decision to direct one's actions in accordance with the moral law. My conception of autonomy differs in that I do not think autonomy necessarily results in moral rectitude.

<sup>97</sup> Earlier, I defined the capacity for autonomy in terms of reasons-responsiveness; if I am to be consistent, then "reasons-responsiveness" has to be roughly the same thing as "the active, deliberate mastery of oneself." Naturally, I claim that it is! But I do have good reasons for doing so.

First, *deliberate self-mastery* cannot be taken to imply that a person must be deeply introspective or in a state of perfect internal harmony in order to count as autonomous. I do not want the term 'self-mastery' to suggest the image of a precocious eight-year-old planning out her future graduate research and petitioning her parents for an IRA while giving them sound and thoughtful marriage advice. I want it to suggest only an active disposition to make plans, rethink plans, consider consequences, respond to situations in ways that other people can comprehend, etc.: in other words, I want it to suggest basic reasons-responsiveness. On my view, most normal persons are autonomous in this minimal sense.

Second, without this qualification, Frankfurt's view risks having the absurd consequence that conflicted agents are not morally responsible for their actions. Berofsky describes an agent, Burton, who "enjoys killing enormously, but is neither addicted nor content with his lifestyle. He would refrain from killing were it not so gratifying, but fails always to summon up sufficient will energy to achieve his second-order desire. [Frankfurt's] position fails to explain why we might hold someone like Burton responsible for a particular act of murder. Insofar as he prefers not to act on his desire to kill, he does not kill freely, i.e., willingly" (Berofsky 1987, 48). Though I have declined to specify sufficiency thresholds for autonomy in this project, it is clear that they are necessary if we are to make real sense of the concept. Many of us suffer from weakness of will or a dearth of self-understanding: this means that we drift a little towards dissolution or wantonness; most of us are not paragons of internal consistency and certainty. But we cannot claim to lack the capacities required for moral responsibility just because we fall short of the ideal of perfect self-mastery: at some point, an agent is sufficiently self-mastered to be answerable for her actions though she fails to be a perfect and unfailing law unto herself.

A number of writers on autonomy (recognizing this problem) have helpfully distinguished between agents with no-more-than-ordinary capacities for deliberate self-mastery and agents in possession of an extraordinary capacity for self-mastery. John Martin Fischer and Mark Ravizza, for instance, distinguish between *strongly reasons-responsive* (SRR) agents and *moderately reasons-responsive* (MRR) agents. In a case where there are sufficient reasons to do *x* (all of which are epistemically available to the agent), an SRR agent meets three conditions: she recognizes the sufficiency of the reasons; she chooses to act in accordance with them; and she follows through, acting on her choice. In the same situation, a merely MRR agent might recognize the sufficiency of the reasons, but fail through

As I argued at length earlier, this does not mean that autonomy is reducible to authenticity or integrity: an agent that is neither dissolute nor dominated can still suffer from a seriously deficient option set. Given the foregoing discussion, I concede that such an agent has minimal autonomy in virtue of the fact that she is neither dominated by another nor un-mastered. But in virtue of her meager option set, her autonomy is *minimal*: as she gains options, she gains new objectives to adopt as her own and new pathways to the objectives she has, thereby increasing her ability to exercise her will in the world.

It is worth noting at this point that the autonomy of an authority must work somewhat differently. It is not the authority's own "personal" will that must be free from domination and adequately self-mastered; but rather a kind of adopted will: a will aimed at her position's objectives and shaped by the mandates and prerogatives that apply to the position. That is, when an agent occupies a position of authority and exercises her will qua authority, she does not primarily engage in the authorship of her

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weakness of will to choose  $x$  or to follow through on her choice. Moderate reasons-responsiveness is sufficient for moral responsibility; an agent need not be perfectly, unerringly self-mastered in Frankfurt's sense order to be held responsible for her actions. See Fischer and Ravizza (1998), Chapters 2-3. Initial presentation of the distinctions among SRR, MRR, and weak reasons-responsiveness on 41-46 and 69-81.

Alternatively: Stanley Benn has proposed a distinction between autonomy and "autarchy," this latter condition being "a condition of human normality, both in the statistical sense, that the overwhelming majority of human beings satisfy it, and in the further sense that anyone who does not satisfy it falls short in some degree as a human being" (Benn 1988, 155). Autonomy, on the other hand, "goes beyond autarchy. It is an excellence of character for which an autarchic person may strive, but which persons achieve in varying degrees, some hardly at all. ... To be autonomous is to live (in Rousseau's phrase) 'according to a law that one prescribes to oneself'" (Benn 1988, 155).

So, imagine, for instance, an agent who, due perhaps to deficiencies in his upbringing, has trouble holding down a job or sustaining a meaningful relationship. He has fathered children he did not want because he failed to use contraceptives when doing so was inconvenient. Etc. He is (at best) moderately reasons-responsive/autarchic. But in virtue of this "minimal autonomy," we hold him responsible for his actions. Another agent successfully battles various temptations in pursuit of long-range plans to become a surgeon. She maintains an honest marriage and caring friendships, taking responsibility for her feelings and actions. She is fully autonomous/strongly reasons-responsive.

It should be noted that Benn, in taking autonomy to be a virtue, seems to assume that when an agent lives according to self-imposed law, she lives according to morally laudable principles. Frankfurt's view makes no such assumption: an agent who fully endorses her first-order desires to do evil is autonomous on his view. See Susan Wolf's *Freedom Within Reason* for an "endorsement" account that supposes moral goodness to be required for genuine autonomy.

own life. Authorities, by substituting the objectives and actions required by their positions for some of the objectives and actions other agents would have chosen if they had been free to choose, are, in an intuitive sense, engaging in the partial authorship of *others'* lives. In other words: for an agent to exercise authority is for her to deploy her capacity for autonomy—her capacity for deliberate and responsible self-authorship—in the service of partly-authoring others' lives (this in the interest of achieving some valuable, legitimated purpose).

Aside from this, however, the same conclusion would seem to be merited: an authority with a will to promote her position's objectives might be free from domination and adequately self-mastered (i.e. competent, committed to her position, etc.), and yet unable to achieve her objectives, fulfill her mandates, or exercise her prerogatives due to an inadequate option set.

#### *6. Autonomy and sovereign authority*

Finally, it might be objected that the conclusions I have derived from the preceding discussion do not apply, for one reason or another, to sovereign authority. This is certainly a concern worth addressing.

Clearly, my conclusions would not apply to sovereign authority if options do not play the same role in enabling sovereignty as they do in enabling autonomy. I will consider this possibility first.

If options enable autonomy because they help us to realize our own wills in the world, it stands to reason that options enable sovereignty in a similar way: in order for an agent in a position of authority to exercise her “adopted will” (i.e. to fulfill her mandates and exercise her prerogatives), she needs options. If a state has a mandate to inexpensively provide reliable infrastructure to its citizens, but construction work in the state is monopolized by a single corrupt cartel, the state will probably be unable to

fulfill that mandate. One might, however, still ask whether having more options makes a state “more sovereign.” As I noted in Chapter 1, sovereign states are customarily understood to be legally equal: to say that some states are more sovereign than others would seem to undermine that important commitment to equality among states. There are three things to be said in response to this concern.

First: I think we *can* understand the addition of options as making a state “more sovereign,” just like it makes a person more autonomous. If we did choose to talk this way, it would be important to remember what having more options implies for a person’s autonomy, and what it doesn’t imply. That is: having more options than some others does not make a person worthy of greater respect or entitled to special privileges; it simply means that the person’s will is, as a matter of fact, less inhibited. Wealthier, more powerful states are “more sovereign,” on my view (at least insofar as we can assume that wealth and power tend to enlarge one’s option set)—but this does not mean that they are therefore entitled to any special status, rights, or privileges.

Further, a state’s having a meager set of options (as weaker, poorer states often do) does not imply that the state may be violated with impunity. We certainly wouldn’t say that it is acceptable to harm poor, unlucky, vulnerable persons, or to violate their limited autonomy. My view is not making a radical claim about the relative importance or entitlements of weaker and stronger states. It merely acknowledges the fact that different states are differently able to work their wills in the world. A state with more options is better able to achieve its objectives, fulfill its mandates, and exercise its prerogatives.

Second, it will perhaps be remembered that the claim that options straightforwardly enhance autonomy was subject to a number of qualifiers; I see no reason to think the same should not be true in the case of sovereignty. These qualifiers

included the law of diminishing marginal utility and the distinction between nominal and material alterations in option sets.

Third, it is important to see that legal equality is not undermined by the fact that states differ as to the size of their option sets. (At least, it is not undermined in principle; the reality is, of course, rather different.) I am confident in making this claim, because it is true of persons in liberal societies. While a person's wealth and connections (i.e. the size of her option set) might as a matter of unfortunate fact give her an advantage over her compatriots in a court of law or when running for public office, they do not in principle bear on her legal standing. That is: in liberal states, wealthy people have no *codified* advantages over anyone else.<sup>98</sup> Legal equality is a principle we strive to uphold in the face of and despite differences in citizens' abilities to exercise their wills freely.

All this being said, however, I do not endorse the use of the phrase "more sovereign" to describe a state with a larger option set than another. The reason is that it makes just as much sense to refer to unitary states as "more sovereign" than federal states (and states with otherwise devolved authority structures) in virtue of their broader scope for action. The potential for confusion is significant; but more importantly, neither usage captures any useful truth about sovereignty that cannot be captured *better* with less-confusing terminology. Let me explain this briefly.

It could be said that federal states and states with devolved authority structures are less sovereign than unitary states because they do not have many of the options to act that unitary states—particularly authoritarian states—enjoy. But we must use our terms carefully: it is not *options* that federal states qua federal states lack. Many federal states are wealthy and powerful, easily able to work their wills in the world

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<sup>98</sup> One might interpret all but the most steeply progressive income tax regimes as systems of codified advantage for the wealthy, but this is at least debatable.

(e.g. Switzerland, the United States, the United Kingdom). Such states have more limited *scopes for action* than their unitary counterparts: the United States government may not endorse a state religion; Iran may (and does).

This is a function of the fact the norms that constitute a position of authority identify the purposes or objectives the authority is supposed to fulfill, together with the mandates (requirements and prohibitions) and prerogatives (rights or entitlements) that constitute and constrain the actions the position's occupant may take in fulfilling the purposes. In the case of sovereignty, some of these mandates and prerogatives are traceable to the institution of sovereignty itself: for instance, the prohibition on intervention in other states' domestic affairs. But those clearly function as minimum requirements for entry into the international community. The specific purposes, mandates, and prerogatives that apply to any given sovereign authority are set (ostensibly, at least) by its body politic. The American and Iranian states, qua authorities, are constituted by different norms to have different scopes for action. As a unitary, authoritarian state, Iran enjoys broad prerogatives and is less constrained by the sorts of mandates that constrain the American government (e.g. the mandate to uphold freedom of religion).

So, there is a comprehensible sense in which states with larger scopes for action are "more sovereign" in that their authority is more encompassing. And there is also a comprehensible sense in which states with more options are "more sovereign" in the same sense that persons with more options are more autonomous.<sup>99</sup> But I think the latter situation is better-captured by saying that states with more options *enjoy*

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<sup>99</sup> An astute reader may have noticed that 'more autonomous' actually suffers from the same problem as 'more sovereign' (and the clumsier 'more authoritative'). On the picture I've sketched, autonomy varies according to both the size of an agent's option set *and* the extent to which she is deliberately self-mastered rather than dissolute. Authority likewise varies according to the size of the available option set and the extent to which the authority fulfills its purposes in accordance with its mandates and prohibitions. This is a terminological rather than a logical or conceptual problem; for that reason, I have chosen not to clear it up in the body of the text.



*greater sovereign autonomy*. The first is better-captured by saying that unitary states *enjoy greater (or more expansive) sovereign prerogative*.<sup>100</sup>

The upshot of this discussion is, I think, that when we evaluate a state's option set (or assess changes to that option set), it will be important to ask whether the state's option set is sufficient for it to fulfill its mandates and exercise its prerogatives. Just as the arrival of an opportunity to be unfaithful affects Mick and Keith differently because of their dispositions and commitments, the same new option might affect states differently because they have different mandates and prerogatives (as set forth by their bodies politic).

The foregoing discussion was in the service of showing that options do enable sovereignty in the same way they enable autonomy (or, more precisely, in the same way they enable any authority). One may yet worry that my analysis of authority in terms of autonomy does not translate to the case of sovereign authority. I see no reason to reject the claim that the exercise of sovereign authority must be justified and shaped by special norms that legitimate the state's part-authorship of its citizens' lives.<sup>101</sup> In fact, I would venture to say that this conclusion is entirely uncontroversial: the vast literature on political obligation attests to this.

More importantly, I cannot think of any reason to reject the claim that the perpetration of a sovereignty violation wrongs the citizens of the violated state, because it jeopardizes the purposes for which they sacrifice some of their autonomy. While it cannot be assumed without argument that sovereignty violation is always all-

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<sup>100</sup> Saying that Iran *enjoys greater sovereign authority* would be unclear, as I have analyzed authority partially in terms of autonomy: use of the phrase leaves open the possibility that the speaker is referring to the size of the state's option set.

<sup>101</sup> This suggests that a state exercises sovereign authority (rather than brute power) only if its actions are, on the whole, compatible with the mandates and prerogatives intended to justify the state's part-authorship of its citizens' lives.

things-considered wrong until we have discussed autonomy violation in more detail,  
this is an important preliminary conclusion.

### Chapter 3. Autonomy Violation and Autonomy Loss

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The purpose of this chapter is to move from giving an account of autonomy itself to giving accounts of several kinds of autonomy violation and loss. The purpose of this, of course, is to prepare to assess claims that practices in contemporary economic globalization either violate state sovereignty or diminish it.

#### A. Coercion

Let's begin by distinguishing coercion from physical force—or, perhaps more accurately, distinguishing physical coercion from non-physical coercion. There is no doubt that physical force is coercive, but because there is no doubt, there isn't much to be said about it. (Clearly, we are not morally responsible for what we are physically forced to do; equally clearly, the use of physical force to influence someone's behavior is a violation of her autonomy.) In what follows, I will be concerned with non-physical coercion as a way of influencing behavior, and from here on, I will use 'coercion' to mean *non-physical coercion*.

##### 1. Coercive proposals

If one agent wishes to influence another to act in a particular way, he might make a request. For instance, Daniel might ask a neighbor, Emily, to look in on his budgie, Burma, while Daniel is away for the weekend.<sup>102</sup> But if the first agent anticipates or encounters resistance, he may try to persuade by means of some rational or emotional appeal: "Burma really likes you, Emily, and I would very much appreciate the help." If that fails, the first agent might make the second an *incentivized offer*: "I will give you \$20 to look in on Burma." All this failing, the first

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<sup>102</sup> A budgie (budgerigar) is a kind of bird sometimes kept as a pet.

agent might issue what is commonly called a *conditional threat*: “Emily, if you refuse to look in on Burma, I will slander your name in the press.” This last attempt seems intuitively to be coercive, while the other attempts to influence Emily do not. Is this intuition right? If it is, how shall we explain what is different between a coercive and a non-coercive proposal? (I will use ‘offer’ and ‘proposal’ more or less interchangeably.)

First, let’s be clear on what is not different.

For one, in both of the proposals described, Daniel attempts to influence Emily’s will by pairing an act or omission with a consequence. If Daniel has chosen the pairing skillfully, Emily will be willing to perform or omit the act *in order to* bring about or prevent the consequence.<sup>103</sup> Daniel first attempts to influence Emily by pairing the act of looking in on Burma with the consequence of receiving \$20. If Emily would be pleased enough to make \$20 *by* looking in on Burma, then *ceteris paribus*, Daniel’s proposal will be successful. But Emily rejects this proposal: perhaps Emily hates budgies, or hates Burma in particular. So Daniel makes the second proposal. If Emily is willing to ensure the safety of her good name *by* looking in on his budgie, then that proposal will be successful. If Emily does not care whether Daniel slanders her name in the press, then that proposal fails, too.

In other words, coercive and non-coercive proposals have the same basic structure, and succeed or fail depending on whether the proposing agent (A) has chosen a consequence that the recipient (B) desires (or desires to avoid) enough to engage in the particular act on which A has conditioned the consequence.

The second thing that isn’t different is the role of B’s declared consent in determining the net outcome of the situation. In both the case in which Daniel offers

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<sup>103</sup> For the sake of convenience, I will adopt Alan Wertheimer’s convention of always using ‘A’ to refer to an agent making a proposal and ‘B’ to refer to the agent receiving the proposal, unless I have given the agents names for purposes of identifying a particular case.

Emily \$20 to check on his budgie and the case in which he threatens to slander her name in the press if she refuses, it is Emily's declaration or withholding of consent that determines whether she looks in on the budgie and receives a "benefit" (of \$20, or the maintenance of her good name), or does not look in on Burma and "suffers" the consequences (of not receiving \$20, or of being slandered). This is not at all to say that consent to an incentivized offer and consent to a conditional threat have the same moral status; they do not. It is merely to point out that when one is the recipient of a proposal like the ones under discussion, one must either declare or withhold consent in order for the relevant consequences to be triggered.

So, what is it that makes the difference between a coercive and a non-coercive offer?

Alan Wertheimer's seminal account of coercion contends that in attempting to establish whether a proposal is coercive, "the crucial question is whether A's declared unilateral plan—what A proposes to do if A's terms are not met—is something that A has the right to do."<sup>104</sup> If A has no right to do whatever she proposes to do if B refuses her offer, then her offer counts as coercive: it is a conditional threat, rather than an incentivized offer.<sup>105</sup>

Wertheimer identifies two kinds of conditional threat: in the first, "A proposes to do Y unless B *agrees* to do X or waives his right not to do X, where B has no prior

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<sup>104</sup> Wertheimer (1996), 137. This is a statement of the position developed in his *Coercion* (1989), chapters 12 and 13.

<sup>105</sup> Some threats do not condition one agent A's proposed course of action on any act being performed or omitted by the agent being threatened B. For instance, A might say to B, "Someday I'm going to walk right out of here" or "I'm going to burn down your house." These are not coercive in that they are not attempts to influence B's behavior: there is, evidently, nothing B can do to prevent A from carrying out his proposed course of action. Of course, the coerciveness of a proposal is not a property of the words used to make the proposal: A could say to B, "I'm going to burn down your house," but convey to B in some other way what conditions B will have to meet to prevent A from following through on this plan. Nozick observes that conditional threats need not be verbalized at all: if a group of gang members detain and begin beating a rival gang member, asking him every so often to reveal the location of his gang's weapons stash, he presumably understands that they will continue to hit him unless he provides the information they seek. See Nozick (1969), 444.

obligation to do X.”<sup>106</sup> For instance: “If you refuse to look in on Burma, I will burn down your house.” In the other, “A proposes to do Y unless B does X, where B has a prior obligation not to do X.”<sup>107</sup> For instance: “If you don’t steal a sack of budgie food for me, I will slander your name in the press.”

So, Daniel has a right to give Emily \$20, but he has no rights to burn down Emily’s house or slander her name in the press. This, on Wertheimer’s view, is what distinguishes his attempt to persuade Emily to look in on Burma from his attempt to coerce her to do so.<sup>108</sup>

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<sup>106</sup> Wertheimer (1987), 6.

<sup>107</sup> Wertheimer (1989), 6.

<sup>108</sup> Two objections to Wertheimer’s conception of coercion should be noted and answered at this point. My thanks to Andrei Buckareff for the first and to Daniel Koltonski for the second. Both concern apparently coercive proposals in which A threatens a unilateral plan that she allegedly has a moral right to carry out.

An example of a “Buckareff case” is as follows: a mother says to her small son, “If you don’t pick up your room this afternoon, I won’t take you for ice cream after dinner.” The mother has a moral right, it could be argued, to withhold the ice cream trip if her son fails to clean his room; moreover, there is nothing on-the-whole wrong with a mother issuing this kind of coercive proposal. But this assessment of the case is plausible only if the mother has not already made an *unconditional* promise to take her son for ice cream after dinner. To make such a promise and then amend it later with a condition *is* morally wrong: it is something the mother has no moral right to do. If she has made an unconditional promise to take him out for ice cream, the mother is morally obliged to find some other way to compel her son to pick up his room. If she has made no such promise—if no ice cream trip was previously mentioned—then the mother is somewhat oddly using the language of a conditional threat to make an incentivized offer. What she means might be more accurately expressed this way: “If you clean up your room, we will go out for ice cream; but not otherwise.”

There is one final variation on the case to consider. Perhaps trips for ice cream are occasional surprises in this family: on any given day, the child knows that an ice cream trip *might* occur. In this case, does the mother have a moral right to deny the child an ice cream trip if he fails to clean his room? Of course, she does: this, too, is an incentivized offer in the grammatical form of a conditional threat. Perhaps the mother is exasperated, and this accounts for her odd choice of words. What she means is something like this: “If you clean your room, one of our occasional ice cream trips will occur tonight; but not otherwise.”

Koltonski has kindly supplied me with a good example of a “Koltonski case.” In this case, two individuals (call them Marx and Engels) are the sole investors in a restaurant. But Marx regularly threatens Engels as follows: “If you don’t do *x*, I will pull out of the business.” (We will assume that this would be financially devastating for Engels.) Absent some contractual provision specifying otherwise, Koltonski suggests, an investor in a business venture is morally entitled to pull out if the investment is no longer to her liking. And yet: this kind of proposal seems both coercive and very wrong.

I agree that the proposal is coercive and very wrong, but I do not think Marx has a moral right to pull out of the business in the way he proposes. I hope it is not controversial to claim that if some course of action would directly and unavoidably cause ruinous consequences for someone else, then it is morally wrong to take that course of action without a genuinely *countervailing* reason. The person suffering the consequences must be deserving of them; or the action must be an unavoidable part of the

It is important to reiterate that A is not guaranteed *success* in his attempt to coerce B just because he presents B with a declared unilateral plan that he, A, has no right to carry out. Imagine that Daniel approaches Emily and says, “If you refuse to look in on Burma, I will cut up all my partner’s clothes.” Daniel presumably has no moral right to cut up his partner’s clothes, but what does Emily care if he does? We need not assume that Emily is particularly callous; only that she rightly feels that Daniel’s relationship with his partner is none of her business. Similarly, she would probably remain unmoved if he said, “If you don’t steal a sack of budgie food for me, I will embezzle money from my company to pay for it.” For A’s proposal to be *coercive*, A’s declared unilateral plan must be something he has no right to carry out. But for A’s (coercive) proposal to be *successful*, A’s declared unilateral plan must be something B is willing to take action (the particular action that A wants him to take) to prevent.

Two questions arise at this point. First: if this is the nature of coercion, in what way *specifically* does coercion hamper autonomy? Second: how does this picture translate from individuals to sovereign states?

I’ll address the first question first. It seems right to say that proposals of the sort we’ve been discussing are ways of reconfiguring another agent’s options: in proposing that Emily look in on his budgie over the weekend in exchange for \$20, Daniel alters her option set such that she now has the option to make \$20 by looking in on a budgie. This is an option she did not have before; moreover, its presence in her

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only plan likely to prevent equally ruinous consequences from befalling oneself or one’s family, etc. Marx has a legal right to pull out of his business arrangement with Engels; that is clear. But unless he can provide a reason of sufficient weight to balance the harm he will do to Engels by pulling out, then he is morally wrong to do so.

Incidentally, I know of a real case in which two brothers owned a small construction business together. The business failed, and one brother filed for bankruptcy, leaving the other to shoulder the failed enterprise’s debt by himself. Evidently, this was neither straightforwardly illegal nor prohibited by the terms of their co-ownership. But there is no doubt in my mind that it was morally wrong.

option set might change the costs and benefits to Emily of other options in her set. For instance, perhaps she was tentatively planning to take herself on a weekend vacation in a nearby quaint village: she still has this option, but now it comes at the cost of \$20 and whatever good will she would gain by watching Daniel's bird. (In economic parlance: this is her *opportunity cost*. Accepting Daniel's proposal, of course, now comes at the cost of her weekend getaway.) Daniel's proposal will succeed if Emily determines that staying home to watch Burma and receiving \$20 is, for some reason, worth the loss of her weekend vacation.

Daniel's proposal that Emily look in on Burma in exchange for his refraining from slandering her name in the press also reconfigures Emily's option set: she now has the option to keep her good name in public by looking in on a budgie. Forgoing *this* option in order to spend her weekend in the country, however, carries a very high cost: she loses her good name. The case in which Daniel threatens to burn down Emily's house is similar: the loss of either home or reputation would be almost insupportable for anyone. If we imagine that what Emily genuinely wishes to do is to go to the country, not stay home to watch a budgie, then it's clear that Daniel is influencing Emily to act in accordance with his will, rather than her own, by making the exercise of her own will too costly for her to bear. In other words: successful coercion of B by A makes the cost of exercising B's own autonomous will, rather than A's will, more than B can bear or absorb.<sup>109</sup> Any coercive *offer* made by A to B is therefore an *attempt* to put the cost of B's autonomy out of her reach, so that B will be

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<sup>109</sup> Nozick uses a number of different locutions to capture this idea: a coercive threat makes B's preferred option "substantially less eligible as a course of conduct;" the threat "worsens [B's preferred] alternative" while rendering A's preferred course of action "significantly higher in utility" to B. See Nozick (1969), 441, 442, 458. Benn argues that an agent is coerced when "he believes that some of the costs of adopting a certain option he would otherwise favor would be so heavy as to make that course ineligible" and that some other agent has deliberately brought about this state of affairs with the intent to influence his choice (Benn 1988, 154).



an agent of A's will rather than her own. This, I think, is a helpful way to understand the specific effect of coercion on autonomy.

Importantly, this suggests that the wrongness of coercion is not fully explained by the fact that A's declared unilateral plan is something he has no right to bring about. That is, Wertheimer's criterion enables us to *identify* coercive offers, but it does not fully explain why coercive offers are wrong. Perhaps we ought to have expected this: if Daniel succeeds in coercing Emily to look in on his budgie by threatening to slander her name in the press if she refuses, then Daniel does not, in fact, slander Emily's name in the press.<sup>110</sup> What he *actually does wrong* seems to have little to do with the wrongness of slander. What he does wrong is deliberately, and for his own benefit, reconfigure Emily's options so that the cost of refusing his will and exercising her own is more than Emily can absorb. Insofar as autonomy is valuable for persons, it does seem wrong to intentionally increase the cost of someone else's free exercise of will so that greater benefits accrue to oneself.<sup>111</sup>

## 2. *Justified coercion*

Before addressing the question of whether this picture translates to the case of sovereignty, I want to address a problem left over from the last chapter. It is clear that autonomous actions can be morally wrong—that autonomy can be put to evil uses. Does this mean, then, that perhaps sometimes autonomy violation could be morally acceptable, or even required? This casts doubt on the understanding of coercion I

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<sup>110</sup> That is, if he does slander her name in the press despite her acquiescence, it is a separate act, not related to the coercive proposal.

<sup>111</sup> There might be cases in which an agent deliberately *but non-coercively* drives up the cost of someone else's autonomy for her own benefit; I take no position on that question. In any case, Wertheimer's criterion helps us to identify which ways of deliberately increasing the cost of someone else's free exercise of will are coercive.

adopt from Wertheimer: that it involves a threat to carry out a plan that the threatening agent has no moral right to carry out.

Imagine that Patrick has taken a hostage and threatens to kill her if his demands are not met. It seems to me that in trying to get Patrick to free the hostage, many ways of influencing others that we ordinarily take to be wrong, and autonomy-violating, would be justified—including some coercive proposals. For instance: “If you do not free your hostage, we will seize your beloved pet snakes and ship them to Ireland.”

Probably the best available justification for making such a threat is that when an agent violates another’s autonomy, he forfeits (at least some of) his own claims against autonomy violation by others. That is, having failed to author his own life in a way that is compatible with the self-authorship of others’ lives, he is not entitled to complain upon finding himself similarly (at most, proportionally) violated. At least one agent or kind of agent gains by this forfeiture the right (and perhaps the responsibility) to violate the wrongdoer’s autonomy in order to rescue those he is harming and compensate or at least aid those already harmed.<sup>112</sup> On this kind of view, an agent like Patrick does not become less autonomous in virtue of his violation (i.e. the crime he commits); he simply loses his right to demand that others respect his autonomy.<sup>113</sup>

Two points of clarification: first, as I suggested just a moment ago, the criterion of *proportionality* is important in determining whether the violation of a wrongdoer’s autonomy is justified. An agent who deceives another into overpaying for some merchandise has earned his court order to reimburse the defrauded party, but

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<sup>112</sup> The question of how any agent gains the right to *punish* the wrongdoer is far too complex to enter into here.

<sup>113</sup> This loss might contingently result in his losing autonomy, in that someone else might interfere with his plans in order to protect those he would harm.

he has not earned, say, a brutal assault. Second, it stands to reason that the violation of a wrongdoer's autonomy cannot be justified if it is achieved by violating the autonomy of some innocent third party. Let's call this the *containment* criterion. For instance, it would be very wrong for hostage negotiators to drag Patrick's elderly mother to the scene of the crisis, allow him to watch police slap her repeatedly, and then tell him that they will slap her some more if he fails to stand down. The criteria of proportionality and containment are intended to set limits on what would otherwise be a rather alarming permission: to engage in coercion.

It might be objected that when the hostage negotiator tells Patrick that his snakes will be mailed to Ireland if he doesn't stand down, he does not actually coerce. Since Patrick has forfeited some of his claim to self-authorship, the negotiator (or someone else) *does* have the right to mail Patrick's snakes to Ireland. Therefore, the argument concludes, the negotiator's "declared unilateral plan" is something he does have a moral right to carry out.

But this is a mistake. What Patrick has lost in taking a hostage is not ownership rights over his snakes, but his claim against being coerced. There is a real sense in which the negotiator does *not* have a right to mail Patrick's snakes to Ireland: they are not the negotiator's snakes. The purpose of the proportionality and containment criteria is to distinguish, in the field of things the negotiator has no right to *actually* do, between those things he may permissibly *threaten* to do in the interest of influencing Patrick, and those things he may not threaten to do (e.g. continue to slap Patrick's elderly mother) regardless of the urgent need to influence Patrick.

This kind of justification for autonomy violation should make it clear that while we cannot say that coercion (or, presumably, other types of autonomy violation) is always wrong, it is not permissible except as a proportional, contained response to a

prior violation. This suggests, in my view, that its occasional permissibility poses no broad, lingering threat to my account of autonomy as a defeasible good and autonomy violation as, with some exceptions, wrong.

### 3. *Coercion and sovereignty*

If sovereignty is relevantly like autonomy such that a similar account of coercion might be used to make sense of supremacy-type sovereignty violation, then we can understand coercive sovereignty violation this way:

A **coercive** sovereignty violation is a successful proposal by an agent A to a state S to carry out a plan that A has no right to carry out *unless* S agrees to a condition set by A.

A's proposal is successful insofar as it renders the cost to S of exercising its sovereign prerogative, rather than A's will, more than S can bear or absorb. But the notion of "a plan that A has no right to carry out" needs some additional explication in this context. The reason is that the institution of sovereignty provides both the parameters of state autonomy and the rules governing state action (the equivalent, for states, of moral rules). In other words, *anything* an agent "has no right" to do to a state is classified as a sovereignty violation. If we make our definition a bit more concrete, we get this formulation:

A **coercive** sovereignty violation is a successful proposal by an agent A to a state S to violate the sovereignty of S or another state *unless* S agrees to a condition set by A.

This tells us that in order to violate a state's sovereignty through coercion, an agent must successfully threaten to carry out a unilateral plan to violate the state's sovereignty in some other way. It's a little confusing at first sight, but ultimately, it's helpful. What the revision suggests is that in order to coercively violate a state's

supremacy, an agent must threaten to violate its territory or independence (or to violate its supremacy in some other way) if the state does not accede to the coercer's demands. We end, then, with this final formulation:

A **coercive** sovereignty violation is a successful proposal by an agent A to a state S to violate the territory, independence, or supremacy of S or another state *unless* S agrees to a condition set by A.

## **B. Exploitation**

In the previous section, I suggested that coercion involves interfering with another agent's option set so as to put the cost of exercising her own will rather than her coercer's out of her reach. As I suggested in Chapter 2, the wrong of coercion can indeed be cashed out in terms of coercive proposals' effects on agents' option sets. There is at least one more kind of act that we intuitively take to be an autonomy violation: exploitation. In this section, I argue that a large option set is a safeguard against exploitation, but that successful exploitation, like coercion, further damages the option sets (and therefore the autonomy) of violated agents.

### *1. Understanding exploitation*

First, it's important to distinguish between the moral and non-moral meanings of 'exploitation.' Consider a case in which Morgann wants to buy a car, and Liz has a car with a book value of about \$1000 that she wishes to sell. Liz is not desperate to sell, and Morgann is not desperate to buy. Morgann proposes that Liz sell her the car for \$950; perhaps Liz accepts, or perhaps she counters with \$1100. They settle on a price close to what each would privately acknowledge is the value of the car (\$1000). In this case, Liz is exploiting (making use of) Morgann's desire for a car in order to make some money selling her a car. But this is not in itself morally problematic: Morgann, after all, is exploiting (making use of) Liz's interest in selling a car in order

to acquire a car for herself. To exploit in the non-moral sense is to make use of some feature of a situation in order to achieve one's ends.

But imagine that Morgann wants to buy a car because a large monster has attacked the seaside city where they both live. (Liz is not afraid of monsters, and plans to stay behind.) Morgann is very anxious to load up her belongings and drive inland. Liz knows this, and she extracts from Morgann the sum of \$20,000 for the \$1000 car. (I will call this the *Monster Case*.) This, we intuitively think, is a case of *morally problematic* exploitation. Why is this?

One possible answer should be dismissed as misleading. This answer is that in the second case, Liz is exploiting *Morgann herself*, rather than some feature of Morgann's situation (e.g. her desire to buy a car). We do tend to talk about morally problematic exploitation in terms of persons, themselves, being exploited (e.g. "exploited workers"). This is probably because such expressions hook up well with our intuition that in cases of morally problematic exploitation, someone is "being used" by another.<sup>114</sup> But this answer does not help us understand exploitation any better; moreover, we can still pinpoint the features of Morgann's situation that Liz is exploiting in the monster case (Morgann's fear and desperation). So this cannot be the difference between problematic and non-problematic exploitation.

Wertheimer argues that (morally problematic) exploitative arrangements have two constitutive elements: first, a benefit to A (the agent making the proposal);<sup>115</sup> second, *either* harm *or* unfairness to B (the recipient of the proposal).<sup>116,117</sup> In cases

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<sup>114</sup> Something very like this idea finds expression in Kant's Categorical Imperative: the claim that persons, qua rational beings, are ends in themselves and therefore never to be used as mere means to others' ends. Generally speaking, this means that if I want to use someone for my ends, I must solicit her free cooperation. She must either freely adopt my end as her own, or achieve, through our cooperative venture, some other end of hers. But the concept of treating someone as a mere means to one's own end is intended to explain the wrongness of a wide swath of behaviors—not just those we would intuitively call *exploitative*. See below for further discussion of this point.

<sup>115</sup> The benefit to A must be perceived as such in order for her to deliberately exploit B.

<sup>116</sup> Wertheimer (1996), 208.

when B is harmed, the exploitation is *harmful*; in cases when B also benefits but is treated unfairly, the exploitation is *mutually beneficial*.<sup>118</sup> This suggests that we can understand non-moral (i.e. morally acceptable) exploitation as occurring in cases when A and B both benefit and neither is treated unfairly (as in the case when Liz offers Morgann a fair price for the car).

But since we are concerned with the effect of exploitation on an autonomous agent's option set, it seems important to understand both harmful and mutually beneficial (in Wertheimer's sense) exploitation in a bit more detail.

## 2. *Harmful exploitation*

Harmful exploitation is difficult to fathom at first, because it's not clear why someone would consent to a proposal the acceptance of which would cause her harm. It is worth distinguishing among five ways in which this might happen.

First, the arrangements A and B make might have harmful consequences for B that neither agent foresaw or intended. Imagine that Emily accepts Daniel's offer to watch Burma the budgie in exchange for \$20, and while she is in Daniel's house attending to the bird she stubs her toe. It is true that Daniel benefits and Emily has been harmed as a result of Emily's agreeing to look in on Burma, but Daniel's benefit consists in having his bird fed, not in causing Emily pain; and the toe-stubbing is an indirect and unintended consequence of the agreement, not an integral part of it. This

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<sup>117</sup> To pick up on the question of how Kant's notion of using others as mere means to one's own ends relates to the narrower category of exploitative agreements (from a few footnotes ago): it might be noted that Wertheimer's account of exploitation can be used to analyze the wrongness of wrong actions that don't take the familiar form of an exploitative agreement—and the results are decidedly in line with a Kantian analysis. For instance, imagine that I lie to a friend to avoid attending an event, and she never learns of my deception. I certainly receive a benefit: I don't have to attend the event. And while some might say that I have not harmed my friend by lying to her, Kant certainly wouldn't. Explaining the precise nature of the harm is a difficult task (for someone else's project), but there is no question that Kant would read the case as one in which I used my friend for my own end (i.e. my own benefit) without soliciting her free cooperation.

<sup>118</sup> Wertheimer (1996), 18-28.

is not, I take it, a case of (morally problematic) exploitation at all, harmful or otherwise; it is simply an unfortunate turn of events.

Second, B might be a poor advocate for herself and A, not realizing this, unwittingly negotiates an arrangement that harms B. If Emily is hopelessly in love with Daniel and agrees to watch Burma despite having a terrible respiratory allergy to budgies, then Daniel has unwittingly exploited Emily's pathetic and self-abnegating feelings for him in order to gain a bird-sitter. And Emily has suffered harm (perhaps she has a severe asthma attack while playing ring-toss with Burma) as a direct consequence of their agreement. This does seem to count as harmful exploitation, but it is probably best understood as *faultless harmful exploitation*: Daniel was ignorant of both Emily's infatuation and her allergy.

Third, A might know that B is a poor advocate for himself and proceed to make a proposal that would, if accepted, harm B, anyway. Imagine that Glenn is a resident of the city under attack by a monster. Desperate to get away, he offers a child on a scooter ten free passes to the local movie theater in exchange for his scooter—an offer the child takes. The child has been seriously harmed, as the scooter is good for riding inland but movie passes are good for nothing in a town besieged by a monster. Glenn took advantage of the child's lack of capacity for practical reasoning in order to benefit himself, and in the process, directly harmed the child.

Fourth, A might deceive B about the consequences of accepting the proposal. Perhaps the child on the scooter is too savvy to take the theater passes in exchange for the scooter, saying that he wants to get away from the monster, too. Glenn tells him that the big explosion heard throughout the city minutes before was the monster being blown up, and that things would soon return to normal. The child believes this and makes the trade; unfortunately (as Glenn knows), the explosion was really caused by



the monster having eaten and successfully digested a nuclear power plant. This is undoubtedly a case of harmful exploitation: Glenn benefits and the child is harmed.

Finally, maybe A coerces B into accepting his proposal. Perhaps Glenn tells the child on the scooter that if he doesn't give it up, he, Glenn, will tie the child to a pole and steal the scooter anyway. Figuring that it is better to be free to run than to be tied to a pole, the child relents. Note that this is a case of coercion as well as a case of harmful exploitation: Glenn has threatened the child with a plan of action he has no right to carry out (tying him to a pole and stealing his property); moreover, Glenn benefits while the child is harmed.

In sum: there are three ways to deliberately effect the harmful exploitation of another. One uses coercion to bring about the benefit desired, another uses deception, and a third requires the non-moral exploitation (that is, the use) by A of whatever feature of B's renders him effectively unable to advocate for himself so as to protect himself from harm (in my example, this feature is the lack of practical reasoning ability that many young children exhibit).

The purpose of the preceding discussion was to zero in more precisely on what harmful exploitation consists in. I think it is useful, in the first place, to see that deception and coercion, both wrongs in their own right, can be employed to make exploitative proposals. It is also useful to be able to disentangle the harmfully exploitative features of such proposals from the deceptive or coercive features. Finally, it is useful to note that at least one sort of harmful exploitation is "purely" exploitative: in such cases, an agent non-coercively and non-deceptively makes use of some feature of a situation in order to extract a benefit for himself at the expense of harm to another.<sup>119</sup>

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<sup>119</sup> This is an interesting result to take note of, as some thinkers advance "force-inclusive" conceptions of exploitation—on these conceptions, exploitation is necessarily coercive or deceptive. See Wertheimer (1996), 25-28, for a discussion of force-inclusive accounts.

We have considered coercion already, and we will consider deception later in the chapter. I want to focus for a moment on the “pure” form of harmful exploitation.

I suggested earlier that one of the things a large option set is good for is that it safeguards against exploitation. But upon considering the examples above, we can see that it does not safeguard against *harmful* exploitation. The boy on the scooter was not cornered into a trade with Glenn due to a lack of alternatives; Glenn exploited the boy’s lack of capacity for autonomy. This stands to reason, because someone with full capacity for autonomy who has *not* been coerced and has *not* been deceived simply isn’t going to make an agreement that results in her being harmed. In the case above, the boy was too young and credulous to have full practical reasoning capacity. Options or the lack of them have nothing to do, as it turns out, with pure harmful exploitation.

Harmful exploitation would seem to affect autonomy by causing the exploited agent to suffer a net loss in options: the boy on the scooter loses his means of transportation and receives no benefits of any kind in return. But can states be harmfully exploited? States are never children, and they cannot be mentally disabled or mentally ill.

States can, however, have a small (or persecuted) educated class.<sup>120</sup> The consequence of this, oftentimes, is limited institutional capacity: a state with a dearth of lawyers, scientists, economists, and engineers is out of luck when its government needs advice. Wealthy and developed states have well-educated people available to tell them how to do all sorts of things (including how to draft precise legal instruments to provide justifications for all the other things they decide to do). In comparison with this kind of epistemic might, some poor countries may indeed resemble the child who trades his scooter for movie passes. Deliberate use of a poor state’s inability to

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<sup>120</sup> Thanks to Richard W. Miller for this point.

adequately digest complex economic, legal, or scientific information in order to harm that state (in a way that generates a benefit for the exploiting agent) would count, it seems to me, as harmful exploitation. We can sum up this idea as follows:

**Harmful exploitative** sovereignty violation occurs when an agreement between an agent A and a state S harms S (causes a net loss of S's options) for the benefit of A.

### 3. *Mutually beneficial exploitation*

The other sort of exploitation is *mutually beneficial*. (Recall that this is not the same as morally non-problematic exploitation.) In a successful case of mutually beneficial exploitation (MBE), A convinces B to accept an exchange in which each party gets something she wants, but B pays a higher price (in money, material goods, labor, time, risk, etc.) than is fair or reasonable. Wertheimer explains that any mutually beneficial arrangement between A and B creates a “social surplus.”<sup>121</sup> This is the sum of benefits to A and B together, measured against whatever they both had prior to making their agreement; it is the amount of value that their cooperation has generated. B can benefit from an arrangement and yet be exploited, in Wertheimer's view, because the division of this social surplus can be unfair.<sup>122</sup> An unfair division of the benefits generated by B's acceptance of A's offer comes about when A has a greater *threat advantage* than B: A can more easily walk away from the negotiations if B rejects his proposal. A is thus able to negotiate more benefits for himself, at B's expense.<sup>123</sup>

This seems to be what's happening in the Monster Case. Liz is planning to stay in town and isn't desperate for the money she will gain by selling the car. So Liz can refuse to sell to Morgann and wait for someone willing to pay top dollar for a way

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<sup>121</sup> Wertheimer (1996), 20-1.

<sup>122</sup> Wertheimer (1996), 20-1.

<sup>123</sup> Wertheimer (1996), 66-7.

out of town. But Morgann is desperate, and it is unlikely that there are too many people looking to sell cars at a time when almost everyone is trying to get out of the city. Morgann cannot walk away.

It is easy to see why their agreement is mutually beneficial: Morgann gains a car and Liz gains \$20,000, and each desired the thing she got. But it's a little harder to understand precisely how it is exploitative, even though intuition suggests to us that it is.

One possibility is that it is exploitative because Liz could have chosen to sell the car to Morgann for less than she did. But this kind of reasoning about exploitation is hard to sustain.<sup>124</sup> If Liz had offered to sell Morgann the car for \$1000—or \$10—it's still true that she could have chosen to sell it for less than she did. Surely, we wouldn't want to say that Liz problematically exploited Morgann by selling her a \$1000 car for \$10.

It might be suggested that the objection misses the spirit of this interpretation of what makes the deal exploitative. The issue isn't that Liz could have sold the car for less than she did in the sense that there are dollar amounts lower than the one she selected as the price for the car. The issue is that Liz is engaging in "rent-seeking:" selling for more than the *minimum* she would accept for the car (which is presumably around \$1000, as that is the book value, but could be less depending on how eager Liz is to be rid of the car). The problem with this retort is that it isn't clear what can be said to explain the wrongness of rent-seeking except that rent-seeking is exploitative. It therefore won't do as an explanation of the wrongness of exploitation.

Another possibility, more in keeping with Wertheimer's criterion (that the benefits of the transaction are shared unfairly) is that there is a \$38,000 difference between the net gains enjoyed by the two parties. Morgann's net gain from the

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<sup>124</sup> Thanks to Richard W. Miller for pushing me on this point.

transaction is -\$19,000 (she paid \$20,000 for a \$1000 car); while Liz's net gain is \$19,000 (she sold a \$1000 car for \$20,000). But this is problematic, because on the net-gain interpretation, Morgann doesn't benefit at all; in fact, she is harmed. But this is absurd: she gained a car in which to drive out of town (not, e.g. useless movie passes). Moreover, it seems misleading to claim that the value of the car is fixed at \$1000. The car is a way out of a city besieged by a plutonium-eating monster: its value to someone without a car (like Morgann) is presumably greater than the car's book value.

Wertheimer proposes that in many cases, the fair division of the social surplus is represented by the division that a competitive market would yield.<sup>125</sup> This seems like the right principle in this case, certainly: if Morgann were confronted with four or five people looking to sell \$1000 cars (none of whom was especially desperate to sell but all of whom were sufficiently interested to offer a competitive price), she would be able to negotiate for a better price. Perhaps she wouldn't get anyone down to \$1000, but this is appropriate given the market conditions (that is, the presence of the monster in the city genuinely increases the value of the car).

So, it seems clear that having a large set of options *does* safeguard an agent against MBE (mutually beneficial exploitation): if Morgann had had more options (more cars available for purchase), then Liz would not have been able to extort \$20,000 from her.

We can now ask the same two questions we recently asked about coercion. First: if this is the nature of MBE, in what way, specifically, does MBE hamper autonomy? Second: how does this picture translate from individuals to sovereign states?

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<sup>125</sup> Wertheimer (1996), 230-33. He is very careful to explain that determining whether the division is unfair is not a simple matter of looking to see if the division is equal, or even proportional to the investments made or risks assumed by the parties (Wertheimer 1996, 216-30).

It seems that we can conclude from this discussion that if an agent can avoid MBE (i.e. can accept only those offers of cooperation which are both mutually beneficial and fair), then that agent significantly decreases the cost of exercising her will in the world. That is, if an agent can decrease the cost of exercising her will in one situation, she increases her opportunities to exercise her will in others. This is quite clear when the cost is actually measured in dollars: if Morgann could have paid \$8000 (say) for the car, she could have used the \$12,000 “savings” to do other things. As it happens, Morgann had hoped to purchase a \$10,000 seat on a spaceship leaving the monster-infested planet from a launch area on the opposite coast. But she started with only \$25,000; after she pays Liz, she has only \$5000 left and cannot buy a seat. Mutually beneficial exploitation of B by A curtails B’s autonomy by unfairly limiting B’s gains from their cooperation, leaving B with fewer resources to support future exercise of her will.

A few objections might arise at this point.

First, it might be objected that every choice comes with an opportunity cost: that is, selecting an option (like accepting a mutually beneficial exploitative proposal) means forgoing the value of all options excluded by the one chosen. Accepting a job that requires spending fifty daytime hours a week in a particular location precludes accepting other jobs that require spending that time in a different location, doing something else. But this doesn’t make the first employer an exploiter. Likewise, Morgann might not be able to purchase a ticket off the planet now that she has had to spend \$20,000 on a car just to leave the city, but some options just are mutually exclusive. The fact that Morgann suffers an opportunity cost does not make Liz an exploiter.

This objection is mistaken, as I am not claiming that Liz an exploiter *because* Morgann suffers an opportunity cost. As the objection rightly points out, every choice

comes with an opportunity cost. Choices to accept mutually beneficial exploitative offers are a subset of the set of choices. If we accept Wertheimer's view, then what identifies a choice as a choice to accept a mutually beneficial exploitative offer is that it is a choice (by B) to accept a smaller benefit from a mutually beneficial cooperative venture than a relevant principle of fairness would have assigned to B. It is Liz's insistence on an unfair division of the benefits of her cooperation with Morgann that makes her an exploiter.

It might then be objected that MBE does not unfairly leave an agent with fewer resources to support future exercise of her will because mutually beneficial exploitative arrangements are, by definition, mutually beneficial. That is, it cannot be right to say that Liz has left Morgann with fewer resources to support future exercise of her will: Morgann now has a car to drive out of the city. But the claim is not that mutually beneficial exploitative arrangements leave the exploited agent with a net loss of resources: that would be harmful exploitation. Morgann clearly has benefitted from her arrangement with Liz: she has more resources to support the exercise of her will than she would have had if she hadn't met and bargained with Liz. But she has been left with fewer resources to support the exercise of her will than she would have had if Liz had struck a mutually beneficial *and fair* bargain with her. That is what is wrong with mutually beneficial exploitation of B by A: it robs B of her *fair* share of what Wertheimer calls the "social surplus" of their cooperation.

Finally, it might be objected that it is question-begging to assert that there is some quantity of benefit that Morgann ought to have received from her cooperation with Liz, and that if she receives less than that, she has been exploited. Why think there is any such thing as a fair or unfair division of the benefits of an arrangement which provides *some* benefit to everyone involved? In other words: if Morgann benefits from her arrangement with Liz, what right does she have to complain that

she's not benefitting *more*? Isn't that just another version of the problematic claim that Liz exploited Morgann insofar as she could have charged Morgann less for the car but didn't?

First, an easy case will show that it does make sense to ask whether the division of benefits in a mutually beneficial arrangement is fair. Imagine that I undertake a house-flipping scheme with a friend. She supplies ninety percent of the capital to buy and renovate the first house (I supply the other ten), and she does most of the non-contracted labor. Upon selling the house, it would be unfair for me to demand fifty percent of the profits—and it would be peculiar for my friend to accede to this demand on the grounds that since both of us are profiting, no particular division of the profits could be more fair than any other.

And second, Wertheimer's view is not a version of the claim that exploitation of B by A occurs *whenever* A and B cooperate and A could have benefitted B more but did not. Among other things, this would seem to suggest that my friend and I each (and almost unavoidably) wrongfully exploit the other in the house-flipping case, as each of us *could* accept a 1% cut of the profits and yield 99% to the other. The claim, rather, is that in any mutually beneficial cooperative scheme, some principle of fairness determines how the benefits ought to be divided.<sup>126</sup> If one agent uses her superior threat advantage to arrogate more than her fair share of the benefits to herself, she exploits the other. I have suggested that the specific effect of this unfairness on the exploited agent's autonomy is that she is stripped of resources she could have used to support future autonomous actions.

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<sup>126</sup> As Wertheimer well knows, deciding what principle of fairness is appropriate for the task of dividing up the social surplus in a given cooperative arrangement is one of the most difficult parts of developing a case that the arrangement represents (or does not represent) MBE. In the house-flipping case, for instance, it's not even clear it would be possible to cogently apply the competitive market principle that seems to yield the right answer in the Monster Case. When examining putative cases of mutually beneficial exploitation, it is important to specify a relevant principle of fairness.



#### 4. *Opportunistic coercive exploitation*

Before we move to the next section, we need to consider one more wrinkle in the Monster Case. Having paid \$19,000 more than the book value of the car, and (we'll say) \$12,000 more than the fair market value, Morgann is left with an insufficient sum of money to buy a spot on the space shuttle. But while Liz is blameworthy for exploiting Morgann's desperation (and for curtailing her autonomy) rather than giving her a fair deal, we've been assuming that Liz doesn't know that Morgann needs \$10,000 for a seat on the space shuttle, or that her (Liz's) exploitation of Morgann will leave Morgann with too little money to purchase a seat. But what if Liz intends to cost Morgann the seat on the space shuttle?

Imagine that Morgann tells Liz, "I have \$25,000, and a seat on the space shuttle costs \$10,000. So I'll pay anything up to \$15,000 for the car." Liz, having the superior threat advantage and wanting to prevent Morgann from leaving the planet, insists on \$20,000. We need not assume that Liz does this out of malice: perhaps she genuinely believes that the monster will be defeated and that space travel is far more dangerous than staying put. Whatever Liz's motivation, Morgann figures that she is better off buying the car and driving away from the monster than keeping her money and being stuck in the city. (After all, she would have to drive to the launch site, so it does her no good to save the \$10,000 if she has no transportation across the continent.) Let's call this case *Monster-Plus*. In *Monster-Plus*, the deal still benefits Morgann, because she has obtained the car she sought. And it is still exploitative in that a fair market price for the car would be much less than \$20,000. But now there is an additional factor.

It seems that in *Monster-Plus*, Liz makes use of the mutually beneficial exploitative bargain *itself* in order to assert her will more deeply into Morgann's life than the parameters of the deal should have occasioned. Liz is not just using her

superior threat advantage to extract more money from Morgann than a competitive market would yield; she is, further, using that advantage to subvert Morgann's will to her own in a distinct sphere of choice. This I will call *opportunistic coercive exploitation* (OCE). It is perhaps clear enough why it counts as exploitation; it is *opportunistic* and *coercive* because it makes use of a special set of circumstances to turn a mutually beneficial exploitative arrangement into an instrument of coercion.

The agreement in Monster-Plus might be difficult to recognize as coercion if Liz's negotiations do not take the form of conditional threats, but we should not confuse the absence of a spoken conditional with the absence of a logical one. In Monster-Plus, Liz is proposing to provide Morgann with a car to leave the besieged city on the condition that Morgann give up her plan to use her money to leave on the space shuttle. Just like Daniel has no right to burn down Emily's house or slander her name in the press, Liz has no (moral) right to deliberately prevent Morgann from leaving a monster-infested planet on a space shuttle. And Liz's mechanism for subverting Morgann's will is even more effective than Daniel's mechanism for subverting Emily's: Liz has not merely raised the cost of Morgann's autonomy to an insupportable level (by threatening the loss of her home or her good name), she has straightforwardly stripped Morgann of the resources she needs to exercise her will.

It might be argued that Liz does not coerce Morgann in Monster-Plus, because the benefit to Morgann (the car) somehow balances or cancels out the fact that Liz has no right to subvert Morgann's will to leave the planet. But this intuition is hard to support. If the fact that B benefits from an arrangement with A does not balance or cancel out the fact that the division of the benefits is unfair (as I argued above using the house-flipping case), why would B's benefitting cancel out the fact that A uses the arrangement to impose on B a unilaterally determined plan that she has no right to impose? Imagine that Emily refuses all of Daniel's proposals because she would

prefer to go to the country for the weekend. Finally, late on Friday, Daniel sabotages Emily's car by puncturing the tires, and then tells her he will give her exactly the amount she will need for four new tires, plus \$20, if she will watch Burma over the weekend. She can have her car fixed on Monday. Emily receives a benefit from this arrangement: she is \$20 and four new tires richer than she otherwise would have been. But the fact that Daniel has provided her with this benefit clearly does not "cancel" or "balance out" the fact that he subverted her will to go to the country by removing the resources she needed to exercise her will.

#### *5. Mutually beneficial exploitation and sovereignty*

We've now arrived at the question of whether mutually beneficial exploitation can be translated to the case of sovereignty. We have already dealt with the "plan that A has no right to impose" clause, so I see no impediment to both MBE and OCE making the jump. In a mutually beneficial exploitative agreement between A and a state S, A and S both benefit. But because of A's superior threat advantage, S receives an unfairly small portion of the total benefit and is thus unfairly robbed of resources to support its future exercise of sovereign will. In a case of opportunistic coercive exploitation, the same conditions hold—but A further exploits the nature of the bargain itself to impose on S a plan A has no right, according to the norms of sovereignty, to impose. So, we can sum up our conclusions with the following two claims:

**Mutually beneficial exploitative** sovereignty violation occurs when an agreement between an agent A and a state S benefits both parties, but because A possesses superior threat advantage, S receives an unfairly small portion of the total benefit and is thus unfairly robbed of resources to support its future exercise of sovereign will;

Sovereignty violation via **opportunistic coercive exploitation** occurs when a mutually beneficial exploitative agreement between an agent A

and a state S is employed by A in order to impose on S a plan A has no right, according to the norms of sovereignty, to impose.

### C. Option loss

In this final section, we will examine two ways that a state can lose options in the absence of both coercion and exploitation: misfortune and free alienation. I argue that when we consider the conditions that must hold in order for agents to freely relinquish options, it is clear that there is one additional type of autonomy violation to add to our list.

#### 1. *Misfortune*

If we understand autonomy to require a decent set of options, and we accept that more options equals greater autonomy (subject to the qualifiers explained in the last chapter), then it stands to reason that the loss of options constitutes a diminishment of autonomy. It is important to consider the various mechanisms by which an agent can lose options: in some cases, some other agent might be responsible for the loss; in others, the agent herself, or no one, might be responsible.

It seems clear, from our discussion of coercion and exploitation, that they have the effect of robbing an agent of some of her option set. In each of those cases, some other agent can be identified as the perpetrator of the loss—the violator of autonomy. It seems best, then, to focus at this point on cases in which there is no identifiable violator. I will first address cases in which options are lost due to circumstances for which no identifiable agent is both causally and morally responsible. I will call these cases of *misfortune*, or *unfortunate* option loss. I will then look at cases in which the agent herself gives uncoerced consent to eschew some options as part of a unilateral plan or a non-exploitative multiparty arrangement (*free alienation*).

If we reverse the law of diminishing marginal utility, and maintain the distinction between nominal and material changes in options, then it seems clear that the overall effect of option loss on an agent depends on both the magnitude of the loss relative to the agent's circumstances, and the agent's perception of the magnitude of the loss. Some losses would devastate almost any agent—the loss of employment, for instance. But others are smaller; and just as additional options are less valuable to those with many, the loss of options is a greater loss to those with few. Moreover, two agents with the same set of options, suffering the same loss, might price the loss very differently. A woman who wants to have children will feel a hysterectomy as a devastating loss, while a woman with little interest in procreating might be less distressed by the same procedure. It seems, then, that whether an agent's autonomy seriously suffers from an unfortunate loss of options depends in part on what particular options are lost, in part on what options remain, and in part on the agent's valuation of the lost options.

It is important to note at this point that because the losses under consideration here are not part of some agreement or arrangement intended to provide compensating benefits (see the next section), I am assuming that unfortunate option losses are *net* option losses. One might argue that this is unjustified.<sup>127</sup> For instance, if a woman requires a hysterectomy because she will likely die of ovarian cancer without one, then she does not *obviously* suffer a net loss in having the hysterectomy. In fact, one might persuasively argue that she has enjoyed an enormous gain in options.

But to say that an agent gains autonomy simply by avoiding death is to confuse the most fundamental prerequisite for exercising autonomy (being alive) with autonomy itself. To think otherwise is to suggest that an agent could lose the better part of her option set in the process of keeping herself alive through some trial or

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<sup>127</sup> Though, it would be odd to retain the label 'unfortunate' in this case.

hardship, and at the end, we would be right to say that she had *gained* autonomy. To take an extreme example: imagine an agent, Annalise, who finds herself in a Nazi-style concentration camp. She knows she faces death if she stays, so she attempts an escape. She succeeds, but sustains an injury in the process that requires the amputation of one arm. To avoid being noticed—a member of a persecuted ethnic group and an amputee, on top of it—she takes refuge in a convent where, due to meager food rations over a cold winter, she falls victim to permanently weakening diseases. Eventually, the convent is raided and Annalise again escapes, but to a country where she knows no one and does not speak the language. This agent has lost her arm, her health, her country, her family, and her language, all in the service of staying alive. Annalise is brave, tough, smart: she has a host of laudable qualities. But it would be absurd to say that she has enjoyed substantial autonomy in her life. It would be even more absurd to say that since she is not dead, she has enjoyed an increase in autonomy over the course of her hardships. Losses incurred in order to stay alive ought to count, I submit, as net losses to autonomy.

What all of this suggests for our discussion of sovereignty is that it's difficult to say, in the absence of specifics, whether the loss of any given option constitutes a material loss of sovereign autonomy or just a nominal loss. In evaluating cases where we cannot point to any particular agent as the violator of sovereignty, but find nonetheless that options have been lost, it will be necessary to consider the absolute and relative magnitude of the options lost, and to take into account, with some reservations (described in the next section), the state's own characterization of its loss. Moreover, option-losses a state suffers in the effort to merely keep itself from dissolving into chaos (the closest equivalent to the death of an individual) are net losses to sovereignty.

## 2. *Alienation of options*

We can turn now to option loss through free alienation. Recall Louise, the wealthy student with acceptance letters from many colleges. But now, imagine that Louise's parents make her an offer: if she chooses the school geographically closest to the family home, they will buy her a new car. Louise assents to this proposal, and the car is purchased. Louise then must notify the schools of her decision. At this point, Louise appears to have only one option; but this is not a condition imposed by circumstances external to her. She still has admission letters from all the schools, and her parents can afford to send her anywhere. In an important sense, she still *has* the option to attend a faraway school. What has changed is that she is no longer free to choose it. She must choose the school geographically closest to her home because she has *alienated* all of her other options by promising her parents not to take them.

On the picture I've sketched, options lost due to misfortune affect autonomy nominally if not materially. But there is a question about whether options lost due to free alienation affect autonomy even nominally: if I freely sign my own options away for reasons I find compelling, am I not *exercising* autonomy, rather than losing it?

Moral philosophy is not wanting for efforts to show that self-limitation does not damage autonomy, and for good reason. If every act of self-limitation lessened autonomy, it would be hard to explain how an institution like marriage, for instance, could be autonomy-enhancing or at least autonomy-preserving. But perhaps it isn't so hard to explain after all: it seems quite likely to me that the sort of marriage typically held up as autonomy-enhancing enlarges an agent's option set in a rather straightforward way.

Consider, for instance, a marriage in which each partner encourages and enables the other to be fully herself. Each provides the emotional support and encouragement the other needs to undertake challenging new ventures—child-rearing,

traveling, further education, career changes. Imagine that at least one of the partners began the relationship very shy and uncertain of herself; alone, she would not have had the courage to try many of the things she has accomplished with her partner's support. Though both have alienated their options to marry and engage in sex with others, each has gained opportunities to do things it would have been very difficult, even impossible, to do without a great deal of support. There is reason to believe, that is, that these partners enjoy a net gain in options.

Further, we'll stipulate that the loss of the option to marry or engage in sex with someone else is not experienced by either partner as a limitation: each is satisfied, over the long term, with the option she has chosen. In two respects, then, the partners seem to have found their autonomy enhanced by their marriage: first, each experiences a genuine net gain in options; second, neither misses the options she has lost.

Contrast this picture, though, with a marriage in which one partner is controlling and jealous. The controlling partner is distracted from engaging in any fulfilling activities because she is preoccupied with worries that her partner is unfaithful. The other partner finds herself having to argue for permission to engage in activities outside the home, and often feels, sadly, that it is easier to stay home and avoid conflict. This marriage is clearly not autonomy-enhancing; it is not even autonomy-preserving. Neither partner is enabled to do anything she could not have done while single; in fact, both are prevented, by the circumstances of the union, from freely exercising their wills. And at least one of the partners acutely feels the loss of her autonomy.

The purpose of these examples is just to suggest that there is nothing about marriage, per se, that is inherently autonomy-enhancing or autonomy-destroying:



whether or not marriage requires a net loss of options, or a felt loss of the options alienated, varies from one union to the next.<sup>128</sup>

We might observe at this point that it can be difficult to assess the net effect of a marriage (or any arrangement, for that matter) on a person's option set. In some cases (like the ones just described), the effect is clear. But in many cases, the overall effect of the marriage on the spouses' autonomy might be debatable. For both of these reasons, the net effect of a marriage on a person's autonomy seems to be partly a function of whether she *believes* that the marriage enhances (or constrains) her autonomy.

Of course, it is also undoubtedly true that persons can evaluate their own lives irrationally, in bad faith, or against unjustifiable criteria. Imagine a newly married woman who moves out of her parents' home, in which she has never been asked to do housework. She chafes against the idea that she must do half the housework in her new home. She complains to her friends that marriage involves a lot of time-consuming drudgery that prevents her from spending as much time at the racetrack as she wishes. At least in this respect, this woman is mistaken about the effect of her marriage on her autonomy: cleaning one's own living space is an unavoidable part of being an independent adult, and sharing responsibilities for a home is an unavoidable part of being married. One might just as well complain that brushing one's teeth is an infringement on autonomy, simply because it takes up time and isn't especially enjoyable. So in determining whether someone's felt loss of autonomy in her marriage ought to be understood as a genuine loss of autonomy, we must consider whether the loss she identifies genuinely limits her in some way that's comprehensible to a reasonable outsider, or if it is a mistake of some sort on her part.

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<sup>128</sup> Haworth likewise argues that "institutionalization is neutral with respect to autonomy. Everything depends on the specific way in which an institutionalized practice is set up. Set up in one way, it is receptive to autonomy; set up in another way, it limits autonomy" (Haworth 1986, 113).

In sum: an agent can alienate some options but thereby gain others, so that on the whole, her autonomy is preserved or even enhanced. She can also alienate some options without compensatory gains in another sphere of action; in this case, her autonomy is diminished. Moreover, an agent might reasonably feel that her autonomy has been diminished even if it is not immediately obvious that her option set has been constricted. Another agent might believe that her autonomy has been diminished but fail to be justified in her belief. It seems, then, that the alienation of options can diminish agent autonomy if:

- (1) the alienation results in a clear net loss of options (whether or not this loss is felt); *or*
- (2) the alienation results in a *reasonable* felt loss of autonomy (whether or not a net loss of options is immediately obvious).

It is important to recall at this point that the cases under discussion now are cases in which options have been freely alienated: surrendered as part of a decision or bargain which is not coerced or exploitative. But why would any agent *freely* alienate options in such a way that she suffers a net option *loss*?

Clearly, it is possible for an agent to freely enter an arrangement and find herself disappointed because circumstances change in a way that no one foresaw or intended. But it is also possible that another party to the arrangement failed to uphold some standard of disclosure during negotiations over the proposal, or failed to keep up her end of the bargain after it was struck. If A's failure to uphold the relevant standards plays a material role in B's choice to alienate certain options (believing, falsely, that she will receive compensating options from the arrangement with A), then it seems right to say that A has unjustly robbed B of those options, and thus violated B's autonomy.

### 3. *Manipulative autonomy violations*

First, it seems clear that if a proposal made by A to B is *deceptive*—if it deliberately misrepresents or suppresses important information about A’s intentions, or the consequences of B’s accepting the proposal, in order to increase the likelihood that B will accept—then A is blameworthy for losses incurred by B as a result of B’s accepting the proposal.<sup>129</sup>

Second, if in making a proposal to B, A is *negligent*—if A carelessly misrepresents or neglects to disclose important information about A’s intentions, or the consequences of B’s accepting the proposal—then A is blameworthy for losses incurred by B as a result of accepting the proposal.<sup>130</sup>

Third, if A and B enter into an arrangement and A, having initially intended to honor the terms of the arrangement, finds that it would benefit her far more to break them, then she might consider *reneging* on her part of the bargain. If she does, then A is blameworthy for losses incurred by B as a result of accepting A’s proposal.

Finally, if A and B enter into an arrangement and A, having initially intended to honor the terms of the arrangement, finds that it would benefit her far more to interpret the terms of the agreement in a way she knows does not reflect the agreement’s spirit, then she interprets the agreement in *bad faith*. If she acts in accordance with this bad-faith interpretation, she is blameworthy for losses incurred by B.

If a negotiation between A and B is characterized by deception or negligence on A’s part, then B’s acceptance of A’s proposal is not, after all, free: B has not *freely*

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<sup>129</sup> Stanley Benn argues that deception and censorship interfere with the accuracy of an agent’s beliefs about her “objective choice conditions:” her abilities and limitations, the resources she has at her disposal, and the genuine obstacles that stand in her way. See Benn (1988), 152-4.

<sup>130</sup> Negligence is perhaps usually a lesser crime than deliberate deception, but this may not always be the case. Those who deceive may have good intentions rather than malicious ones, and negligence may be the effect of indifference to the fates of others (rather than something more innocuous, like disorganization).

alienated the relevant options because her choice was materially impacted by A's deception (or negligence). And if A reneges on a freely-made agreement with B, or interprets their agreement in bad faith, then B must be free to exit or renegotiate the agreement in order for her continued compliance with her side of the bargain to be genuinely free. If she is unable to exit or renegotiate, her participation in the arrangement is not free. In all cases of what I will call *manipulative autonomy violations*, A unjustly robs B of options (and thus autonomy).

#### 4. *Free alienation and prerogative*

It seems clear that for an agent to *freely* alienate one or more of her options, what she must be *free from* is autonomy-violating influence: coercion, exploitation, and manipulation. And the picture I sketched above using the example of marriage shows that the free alienation of options does not result *necessarily* in a net loss of options (though it can have that result). But it might be objected here that my discussion of the marriage case does not really help us understand the concept of free alienation, *per se*. How are we to analyze the act of marrying itself—the promise to “forsake [not choose] all others [options to be with others]”—rather than the effects of making such a promise on an agent's option set?

Because marriage is a complex institution, an analysis of the promise to enter into a marriage would be difficult, and ultimately more distracting than enlightening. Let's instead return to the case in which Louise, the wealthy student, promises her parents that she will attend the school closest to home, “forsaking” her options to attend the others to which she has been admitted.

The puzzle generated by free alienation is that once an option *P* is alienated by an agent, she would seem to simultaneously have and lack that option. Louise, for instance, has admissions letters from (let's say) six schools, giving her six options.

She promises to choose the school closest to her family home (Michigan), alienating five of the six options. But imagine that she comes to regret this promise, tempted by the prospect of one of the other schools (Cornell). One cannot be tempted by an option one doesn't have: clearly, she has the option to go to Cornell until she informs the admissions office that she isn't coming. On one reading of the situation, Louise does not have the option to go to Cornell; on the other, she does.

The solution to the puzzle, I believe, is that when an agent *freely* alienates one of her options, she actually changes her scope for action: the (mandates and prerogatives) that shape her will. The option is still there; what she lacks is the prerogative to take it.<sup>131</sup>

It will undoubtedly be objected that Louise is not an authority, and thus has no set of mandates and prerogatives. But I think my account of authority as a kind of projection of autonomy (in which an autonomous agent adopts the objectives for which her position exists, and conforms her will qua authority to the norms that constitute her position and legitimate her interference in others' autonomy) can be turned about, and used to further illuminate the concept of autonomy itself. Surely, if a (human) agent adopts particular objectives and norms when she exercises her will qua authority, then she must have objectives and norms of her own that inform her will qua autonomous agent. As I said in the last chapter, an autonomous agent is self-mastered, not dissolute: this suggests that she works deliberately toward objectives and shapes her will in accordance with norms (rather than acting only from impulse, never with any particular purpose in mind and with no views on what values her actions ought to reflect).

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<sup>131</sup> This is not to say that her promise to her parents is somehow irreversible. She would be entirely within her rights if she approached them and honestly explained her misgivings about the promise; if they are good parents and good people, they should release her and allow her to choose the school she really prefers. What is not within her prerogative is for her to unilaterally decide that she will go to Cornell regardless of what she promised her parents.

So, when an agent freely—autonomously—alienates one of her options, she does not cause the option to be foreclosed, as it were, from the outside. Rather, she alters her own scope for action as determined by her own values and commitments. She is therefore responsible for whatever further effects her alienation has on her option set.

### *5. Options and sovereignty*

I argued in the previous chapter that if options enable autonomy because they help us to realize our own wills in the world, it stands to reason that options enable sovereignty in a similar way. On the picture I've just sketched, the loss of options constitutes the diminishment of sovereign autonomy. In the case where options are lost due to misfortune, no one is responsible for the loss. In cases where a state freely alienates its options, that state alone is responsible, having changed its own scope for action. But in cases where a state is deliberately deceived or negligently misled, the agent responsible robs the state of sovereignty. The same is true in cases where an agent makes a pact with a state and then reneges, or interprets the pact in bad faith.

We can sum up this last set of conclusions with these claims:

**Unfortunate option loss** occurs when a state loses options due to misfortune. Because the loss is not part of some agreement or arrangement intended to provide compensating benefits, the loss is assumed to be a net loss. The seriousness of the loss depends on:

- (1) the magnitude of the loss relative to the state's remaining options;
- (2) the state's reasonable perception of the loss;

**Free alienation** of sovereignty occurs when a state gives free (uncoerced ) consent to eschew some options—that is, remove from its own scope for action the prerogative to choose those options—as part of a unilateral plan, or a non-exploitative, good faith multiparty

agreement on which no party reneges. Even if the alienation is genuinely free, some accident of circumstance might result in:

- (1) a clear net loss of options (whether or not this loss is felt); *or*
- (2) a *reasonable* felt loss of autonomy (whether or not a net loss of options is immediately obvious);

**Manipulative** sovereignty violation occurs when an agreement between an agent A and a state is characterized by deception or negligence (on A's part, in the negotiating stage) or reneging or bad-faith behavior (on A's part, in the implementation stage).

### A. Violation claims and loss claims

In assessing the claim that economic globalization (or, more accurately, the institutional arrangements and practices that characterize the contemporary global economy) threatens sovereignty, we need to be clear on what claim, exactly, we are assessing. The previous chapter identified five distinct kinds of sovereignty violation: cases in which a state's option set is effectively constricted or diminished by some identifiable and culpable agent. They are as follows:

A **coercive** sovereignty violation is a successful proposal by an agent A to a state S to violate the territory, independence, or supremacy of S or another state *unless* S agrees to a condition set by A.

**Harmful exploitative** sovereignty violation occurs when an agreement between an agent A and a state S harms S (causes a net loss of S's options) for the benefit of A.

**Mutually beneficial exploitative** sovereignty violation occurs when an agreement between an agent A and a state S benefits both parties, but because A possesses superior threat advantage, S receives an unfairly small portion of the total benefit and is thus unfairly robbed of resources to support its future exercise of sovereign will;

Sovereignty violation via **opportunistic coercive exploitation** occurs when a mutually beneficial exploitative agreement between an agent A and a state S is employed by A in order to impose on S a plan A has no right, according to the norms of sovereignty, to impose.

**Manipulative** sovereignty violation occurs when an agreement between an agent A and a state is characterized by deception or negligence (on A's part, in the negotiating stage) or renegeing or bad-faith behavior (on A's part, in the implementation stage).

I will refer to these claims, collectively, as *violation claims*. We also identified two ways in which a state might lose options in the absence of any external violator:



**Unfortunate option loss** occurs when a state loses options due to misfortune. Because the loss is not part of some agreement or arrangement intended to provide compensating benefits, the loss is assumed to be a net loss. The seriousness of the loss depends on:

- (1) the magnitude of the loss relative to the state's remaining options;
- (2) the state's reasonable perception of the loss;

**Free alienation** of sovereignty occurs when a state gives free (uncoerced ) consent to eschew some options—that is, remove from its own scope for action the prerogative to choose those options—as part of a unilateral plan, or a non-exploitative, good faith multiparty agreement on which no party reneges. Even if the alienation is genuinely free, some accident of circumstance might result in:

- (1) a clear net loss of options (whether or not this loss is felt); *or*
- (2) a *reasonable* felt loss of autonomy (whether or not a net loss of options is immediately obvious).

I will refer to these, collectively, as *loss claims*.

The task of this chapter is to take stock of the claims that have been advanced regarding the effect of economic globalization on sovereignty. I've grouped the claims according to whether they seem best interpreted as violation or loss claims,<sup>132</sup>

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<sup>132</sup> I have left out one claim that doesn't clearly fall into either category. I have done this not out of a desire to make my analysis tidier (though that is a handy side-effect), but rather because this claim is a genuine odd-man-out: I have only found it discussed in a couple of sources, and it isn't terribly plausible. But just to cover my bases, I will discuss it briefly here.

States are subject to credit analyses by potential creditors and/or by independent firms, the results of which states do not control and which can have an enormous impact on their economic prospects. This, it has been suggested, is a threat to sovereignty. See Scholte (1997), 444; Evans (1997), 67. I tend to think that this is clearly not a threat to sovereignty: a low credit rating can certainly damage a country's prospects, and if the low rating is inaccurate it can damage a country's prospects unjustly. But the practice of rating credit simply synthesizes and reports information about a country's borrowing and policymaking history that potential lenders could acquire on their own with sufficient energy and resources. It is absurd to suggest that lenders ought not to act on good information about the economies and repayment histories of prospective borrowers—that in order to avoid violating sovereignty, potential lenders must lend indiscriminately, to whatever country wants to borrow.

(It is perhaps worth noting that inaccurately *high* credit ratings can be damaging , as well: Greece's inflated credit rating permitted it to borrow a lot of money very cheaply. While the EU seems likely to provide a partial bailout, it is requiring Greece to make very unpopular and painful cuts in government spending.)

In any case, sovereign states have a long history of borrowing money from commercial sources; presumably, they have always been subject to formal or informal credit investigations. Credit reporting and the rational lending decisions that (should) result from the possession of accurate information are

and I end the chapter by considering some implications of widespread sovereignty loss for the institution as a whole.

## **B. Violation claims**

These are concerns about the conditions under which a state enters an agreement (i.e. accepts a proposal): there are three cases, and some intuitive reason to think that each represents a sovereignty violation. I will present each case, then argue for the assessment I think is warranted.

### *1. Conditioned lending*

Conditioned lending is the case described in the introductory chapter. Developing countries seeking IMF loans to relieve liquidity crises have, for several decades, been required to meet “structural adjustment” conditions set by the IMF. These conditions, ostensibly intended to decrease the likelihood of future liquidity crises, require the borrower state to institute “austere” fiscal policies and to liberalize trade and investment. *Fiscal* policy is related to government revenue<sup>133</sup> and expenditure; fiscal *austerity* involves paying down sovereign debt and cutting “liabilities” (e.g. pensions for retired government workers) and public spending (e.g. on social programs) to pay for it.<sup>134</sup> Adherence to IMF conditions is a formal prerequisite for receiving further IMF and World Bank loans, and a de facto prerequisite for receiving bilateral and private loans.<sup>135</sup> And it has been argued that conditionality constitutes a violation of borrower states’ sovereignty:

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not plausibly sovereignty violations; an account suggesting otherwise would take us far afield of the way sovereignty has traditionally been understood.

<sup>133</sup> Government revenue includes income from taxes, the sale of natural resources, foreign aid, loans, and profit from state-run industry.

<sup>134</sup> See Fry et al. (2004); Hancock (1989), 61-64; Peet (2003), 140-141.

<sup>135</sup> The IMF is not unaware of the criticisms that have long been leveled against it; in recent years, it has touted its willingness to soften fiscal austerity requirements. Whether it has actually done so is

Some observers see IMF conditionality as overly intrusive, going well beyond what the IMF has a ‘moral right’ to expect. The implication is that countries turning to the Fund are losing their national sovereignty over economic policy design, and being cajoled into pursuing policies reflecting the preferences of the Fund’s major shareholders—the richer economies of the world.<sup>136</sup>

Based on my analysis of opportunistic coercive exploitation, I think conditioned lending falls into that category, and thus constitutes a sovereignty violation.

In a conditioned lending case, the IMF and the state strike a mutually beneficial exploitative bargain. It is clearly mutually beneficial: the state is made liquid through receipt of the loan. (It is, therefore, not harmfully exploitative.) But imagine there were four or five IMFs competing for the opportunity to provide loans for illiquid states: the state would presumably reject an offer that required substantial reductions in sovereign prerogative.<sup>137</sup> The fact that the state may strike this mutually beneficial exploitative bargain only with the IMF is taken as an opportunity for the IMF to extend its influence more deeply into the autonomy of the state than would have been possible under competitive market conditions. In a case where the IMF merely demanded higher rates of interest than a competitive market for lending to illiquid states would support, it would *not* be engaging opportunistic coercive

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arguable: see Kovach and Fourmy (2006) for a discussion of the use of structural conditions in recent IMF and World Bank lending.

<sup>136</sup> Bird (2000), 214. See also Hancock (1989), 58-61; *Life and Debt* (2001); Stiglitz (2002). Feldstein also speaks in terms of *moral rights*: “A nation’s desperate need for short-term financial help does not give the IMF the moral right to substitute its technical judgments for the outcome of the nation’s political process” (Feldstein 1998, 27). The symbol for Stiglitz of loss of sovereignty suffered at the hands of the IMF is a photograph of Michel Camdessus, former Managing Director of the IMF, “standing with a stern face and crossed arms over the seated and humiliated president of Indonesia. The hapless president was being forced, in effect, to turn over economic sovereignty of his country to the IMF in return for the aid his country needed” (Stiglitz 2002, 41).

<sup>137</sup> Alternatively, if a state has a less-urgent need for the loan, the size of the IMF’s threat advantage will be reduced: “At the heart of conditionality lies a process of negotiation; the Fund offers its financial support in exchange for a government’s commitment to effect particular changes in the member country’s policies. A larger country in a stronger financial position has more numerous financing alternatives, as well as a higher-quality economic team; it is thus less likely it will have to accept policy conditions it does not like” (Buirra 2003, 59).

exploitation (merely mutually beneficial exploitation). It is the fact that the IMF uses the mutually beneficial exploitative agreement itself to penetrate the state's autonomy that makes the case one of opportunistic coercive exploitation. As economist Martin Feldstein argues, an indebted country seeking IMF assistance is

the IMF's client or patient, but not its ward. ... The IMF should provide the technical advice and the limited financial assistance necessary to deal with a funding crisis and to place a country in a situation that makes a relapse unlikely. It should not use the opportunity to impose other economic changes that, however helpful they may be, are not necessary to deal with the balance-of-payments problem and are the proper responsibility of the country's own political system.<sup>138</sup>

It might be objected that the fairness-as-competitive-market principle that worked in the Monster Case does not get us the right answer here: if it doesn't work and no other fairness principle presents itself, then perhaps there is no mutually beneficial exploitation, much less OCE. It seems likely that access to additional willing lenders would result in the illiquid state's getting a better deal. But would that be more *fair*, or just more *advantageous for the state*?

It might be suggested, that is, that since the illiquid country has, by definition, managed its finances badly, giving it the chance to cherry-pick its loan conditions would not make anything more fair. In fact, given the amount of money at stake, perhaps it is not unfair for the IMF and other lenders to demand fiscal austerity from borrower countries. The problem with the imposition of fiscal austerity in poor countries, however, is that there are few generous pensions to cut. There is no army of redundant civil servants to cull, no "pork" to trim from the budget. Sometimes, the only spending there is to cut is spending on minimal social programs and subsidies for people living at the margins already. For that reason, I think, a competitive-market-

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<sup>138</sup> Feldstein (1998), 27.

based fairness principle *is* relevant. In a genuinely competitive market, firms pay close attention to the needs and interests of the people whose business they wish to secure. A competition between lenders to poor, illiquid states might have encouraged the development of innovative fiscal structures (and other programs) that retained some of what's good about austerity (living within one's income, essentially) but caused far less hardship for the poorest than traditional austerity measures. As things have stood for the past few decades, the IMF has had no incentive to think creatively about sovereign lending, and other lending institutions, far from thinking creatively themselves, have followed the IMF in lockstep.

It might be objected that poor countries are not entitled by any reasonable principle of fairness to have “creative” creditors—that the principle of fairness-as-market-competition is only intended to prevent malicious uses of superior threat advantage. But why not think that it ought also to prevent negligent uses of superior threat advantage? It seems that what the competitive market principle yields is the deal that the party in the weaker bargaining position would get if the stronger party's superior threat advantage were neutralized: I don't see how it could matter whether that deal is a lower price for a car or a loan with less destructive structural adjustment conditions.

A few objections of a different sort are more troubling. First, there is good evidence that the typical IMF client is far from fully compliant with the conditions it accepted when it took out an IMF loan.<sup>139</sup> Some characterize IMF lending in terms that paint the Fund as a dupe:

If a country violates its agreement with the IMF, the organization may simply grant a waiver, modifying the offending conditions. Or the fund may suspend the loan, only to later negotiate a new agreement. Money will start to flow again, the borrower will violate the new conditions,

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<sup>139</sup> See Bandow (1994), 21 and Edwards (1999), 77.

the IMF will hold up payments, the loan will be renegotiated, and the process will begin anew.<sup>140</sup>

An even more damaging objection claims that in many of the cases in which IMF clients have instituted structural reforms, they have done so because they recognized the necessity of the reforms, not because the IMF forced the reforms on them:

Countries such as Bangladesh, China, Mexico, Tanzania, and Vietnam have all moved unsteadily towards more market-oriented policies because they have felt the consequences of disastrous economic failure. For years they operated money-losing enterprises and bloated public bureaucracies and manipulated credit, money, prices, and trade for the benefit of well-connected elites. But the day of reckoning finally came. ... [O]nce governments have decided that they have to either adopt reforms or perish, it is no surprise when they are willing to accept the IMF's money....<sup>141</sup>

Worst of all is the claim that states may seek out conditioned loans in order to use the IMF as a scapegoat for independently-desired reforms:

International negotiations sometimes enable government leaders to do what they privately wish to do, but are powerless to do domestically. [This] pattern characterizes many stabilization programs that are misleadingly said to be "imposed" by the IMF. For example, in... 1974 and 1977 negotiations between Italy and the IMF, domestic conservative forces exploited IMF pressure to facilitate policy moves that were otherwise infeasible internally.<sup>142</sup>

Whether these objections seriously damage my assessment depends, first, on the extent to which they accurately characterize IMF-borrower relations; and second, on the reasons behind state officials' behavior in cases where the objections describe IMF loan negotiations at least somewhat accurately. If a state refuses to abide by agreed-upon IMF conditions, or puts off asking for an IMF loan until it absolutely must, perhaps it does so because its government genuinely finds the conditions unacceptably

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<sup>140</sup> Bandow (1994), 21.

<sup>141</sup> Bandow (1994), 26.

<sup>142</sup> Putnam (1988), 457. See Vreeland (2003) for an updated discussion of this phenomenon.

intrusive. Alternatively, perhaps the state is guilty of deceiving the IMF, reneging on the terms of its agreement, or interpreting its agreement in bad faith. If the latter, I freely concede that my analysis is inapplicable. But if the former, I think my claim holds. A state might successfully resist the opportunistic coercive exploitation of IMF conditions, but this doesn't absolve the IMF for its attempt to coerce.

## *2. World Trade Organization membership*

The World Trade Organization (WTO) was born in 1995 out of the 1948 General Agreement on Tariffs and Trade (GATT). The purpose of the GATT was (and is) to remove barriers to global free trade by facilitating the reduction of the import tariffs that states had long placed on foreign goods.<sup>143</sup> This was to take place incrementally, in successive rounds of multiparty negotiation, in order to move in an orderly, predictable, and relatively painless way towards a single global market for goods (and perhaps some services, as well). The end-goal is for every state to receive “national treatment” from every other—that is, no state will discriminate between domestically-produced goods and foreign imports. It is the globalization of what used to be known in the United States as “Most Favored Nation” status.

This doesn't sound like a terrible idea, and in principle, it isn't: the states of the United States enjoy mostly unrestricted trade with one another and this has undoubtedly fostered economic prosperity. Imagine if shipping a truckload of goods from California to Vermont involved stopping at the borders of fifteen states in between and paying through-transit fees, and then paying a final tariff to the state of Vermont at the end: those goods would certainly cost more than a similar truckload actually costs under conditions of mostly-free interstate commerce.

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<sup>143</sup> WTO members also commit to converting non-tariff barriers like subsidies and tax breaks to tariffs that can then be subject to negotiation.

So there is nothing inherently crazy about wanting to apply this principle to the world as a whole. But the process of working to get there via rounds of GATT negotiations has been far from painless for many countries.

One of the many criticisms leveled at the WTO is that avoiding World Trade Organization membership is all but impossible, and that the inevitability of involvement with the organization is a threat to sovereignty. Indeed, the overwhelming majority of world trade is conducted by WTO members ostensibly in accordance with the GATT and subsequent affiliated agreements. Leaving the WTO is not a real option for developing countries: failure to participate in the WTO (in the sense of adjusting one's trade policies to conform with WTO standards) means being effectively shut out of large portions of the world market. WTO membership thus effectively prevents member countries from determining their own comprehensive economic policies:<sup>144</sup> trade policy is imported from WTO agreements rather than generated domestically, by the state.

Of course, member states negotiate the terms of the agreements that constitute the WTO. But in practice, the WTO's agenda is set by developed countries: for instance, wealthy countries have been very successful at prying open the markets of poor countries while keeping their own relatively well-protected from many cheap developing-country imports.<sup>145</sup> In this way, the developed countries are able to generate trade policies that favor their own interests and export them to developing countries. Wealthy countries still enjoy substantial control over their trade policies, but weaker countries have lost a good deal of control over theirs.

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<sup>144</sup> Scholte (1997), 443-444.

<sup>145</sup> Bello (2004); Keet (2000), 127, 132-137; Khor (2000b), 11-23; Singer (2002), 70-71. Even free-market apologist Martin Wolf admits that wealthy countries are hypocrites when it comes to trade liberalization: see Wolf (2004), 212-217.



It might be argued, in the wake of the collapse of the Doha round of negotiations in 2007, that poor and middle-income countries *are* able to exert some influence in the organization when they bargain collectively. The WTO has been criticized because decisions are taken by consensus rather than majority, and critics have pointed out that wealthy countries have taken advantage of poor countries' weak bargaining positions when attempting to push agreements through the General Council. For a long time, poor countries seemed to lack both the resources and the shared perception of common interests needed to form effective blocs. But the leadership of Brazil, China, and India, together with shared outrage over wealthy countries' continued failure to budge on issues of importance to developing countries (e.g. agricultural subsidies) in the so-called "development round" of negotiations, helped poor countries to solidify resistance to wealthy-country demands.

There is something to be said for this, but it has to be noted, first, that the collapse of Doha means that the extant agreements—some of which the developing countries vehemently oppose—remain in force, unrevised.<sup>146</sup> Moreover, the ability to stall negotiations is hardly as useful a power as the ability to successfully negotiate terms favorable to your interests.

In trying to decide what to think about this case, we do have to recognize, I think, that the *purpose* of the organization is to lower tariffs—in other words, to facilitate the free alienation of states' options to set tariffs (i.e. the removal of the prerogative to set import tariffs)—so the inevitable loss of this prerogative is not an opportunistic intrusion of the kind that conditioned lending represents. But does it represent a sovereignty violation, nonetheless?

There is a way in which the answers to many of these questions seem to depend on the inclination to paranoia of the person answering them. If wealthy states

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<sup>146</sup> Thanks are owed to Richard W. Miller for this point.

wanted to create an organization that would allow them to effectively set the trade policy for weaker states, the World Trade Organization would fit the bill. One might deny that wealthy states are spurred by any such deliberately malicious objective. But why think it's malicious? The stated purpose of the GATT *is* to standardize trade policy. Strong states *do* want to open markets in weak states, because they want to open markets, period. As I suggested, none of this has been kept secret. In principle, the WTO is a mutually beneficial, non-exploitative bargain: it seems the most we can say is that it requires the alienation of one important option—the option to exert direct control over import tariffs—but in exchange for options to sell one's own goods in unprotected markets. The WTO ostensibly provides member states with a net gain in options.

The problem with this assessment is that strong states have not worked to open markets in weak states as part of a consistently applied policy of opening all markets equally (or proportionally in accordance with countries' level of economic development). The strong states convinced the weaker ones to formally alienate protectionist options by promising to do the same—but this promise has not been kept. The wealthy countries have “negotiated” to keep many of their own protectionist instruments, especially subsidies. Depending on what wealthy countries intended and how much poorer countries understood about what they were getting themselves into (neither of which we can know for certain), the wealthy countries are *at best* guilty of mutually beneficial exploitation, and possibly harmful exploitation, reneging, or outright deception.

That is to say: if the poorer countries knew or had well-founded suspicions that the WTO would benefit the wealthy countries disproportionately and they acceded anyway, then the wealthy countries are guilty of giving the poorer countries a mutually beneficial exploitative bargain: the wealthy countries have used their

superior threat advantage to arrogate to themselves an unfair share of the surplus created by their cooperation with the poorer countries. That, as I said, is the best-case scenario. It is also possible that some poor countries were not able to fully absorb the implications of the treaties to which they were committing themselves; insofar as the wealthy countries knew or had good reason to think that this was the case, they may have harmfully exploited some of the poorer countries.<sup>147</sup> Finally, it is possible that wealthy countries have committed manipulative sovereignty violations in negotiating trade agreements with poorer countries: certainly, to refuse to lower many of their own tariffs and subsidies while demanding precisely those kinds of sacrifices from poor countries is to interpret WTO agreements in bad faith; again, depending on the wealthy countries' intentions, it may count as renegeing or even deception. In any case, the wealthy countries are guilty of either exploitative or manipulative sovereignty violations of many poorer countries.

By way of objection to the claim that accession to the WTO (or participation in other trade agreements) violates sovereignty, Philip Levy has presented the "dilemma of the good job:"

Consider a young college graduate hoping to succeed as an actor. Our aspiring thespian faces the choice each morning of heading off to an audition where he has a slim chance of landing a low-paying role. What if he decides he would rather sleep in on a given morning? The expected cost to sleeping in is just the meager wage weighted by the odds of landing the part. He can rest easy. Suppose, though, that a friend calls and offers our young graduate a job with a six-figure salary and demanding hours. What has happened to the cost of sleeping in? It

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<sup>147</sup> I say that the wealthy countries *may have* harmfully exploited the poorer countries in this case because in order for harmful exploitation to occur, the recipient of the exploitative offer must actually be *harmed*. It is certainly not impossible for a poor state, despite being a bad advocate for itself, and despite being exploited by wealthy countries that *know* the poor state to be a bad advocate for itself, to benefit from its accession to the WTO "by accident." The extent to which this would reduce the blameworthiness of the wealthy country is debatable.

has risen dramatically. An absence would likely threaten not only the day's wages, but also the job itself, possibly years of lucrative work.<sup>148</sup>

There would be a high opportunity cost, Levy admits, associated with a state's refusal to participate in the WTO regime. But this cost is no different, he argues, from the opportunity cost faced by the young graduate if he chooses to sleep in rather than go to his new, six-figure job. The graduate may choose to sleep in nonetheless, and pay the cost; if he doesn't, we can assume that he takes the job freely. Likewise, a state with serious objections to GATT and subsequent WTO treaties can choose not to join; if it does, we can assume that the state accedes freely.

This argument is nothing if not evidence of the need to look carefully at the concepts of sovereignty, coercion, exploitation, etc. before attempting to make a determination about whether entrance into trade agreements impacts sovereignty. For one thing, Levy assumes that sovereignty violation must take the form of coercion. But given that what makes coercion troubling is its negative impact on an agent's option set, it stands to reason that other forms of influence that negatively impact agents' option sets might also count as sovereignty violations. I hope I have made a good case for the inclusion of exploitation and manipulation in the stable of sovereignty-violating (because autonomy-violating) forms of influence. For another, Levy appears to tacitly dismiss the possibility that exploitation could be an autonomy-violating form of influence on the grounds that every choice has an opportunity cost. But as I have argued, whether or not a choice carries an opportunity cost is not what determines whether the choice is made under conditions of exploitation. Imagine that the employer in Levy's example were to meet with the young graduate and discover that he aspired to an acting career. Taking this as evidence that the graduate would be willing to work for very little money, the employer announces to him that he will

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<sup>148</sup> Levy (2006), 186.

receive \$40,000 per year, rather than the competitive, “six-figure” salary any other new hire would have received. Forty thousand dollars is enough money to make it worth the graduate’s while to get up in the morning, given that his alternative is to make nothing at all. But clearly, the employer is benefitting unfairly from its arrangement with the young graduate: in a competitive market, an applicant to the company’s open position could command the six figures initially offered.

In sum, the young graduate case, as Levy has described it, is unproblematic. But the case is simply not analogous to the case of a poor country acceding to the WTO.

### *3. Indirect expropriation clauses*

The last case concerns particular provisions in NAFTA (replicated in CAFTA and a minimum of forty subsequent bilateral investment treaties), ostensibly intended to prevent expropriation of foreign investors’ assets.<sup>149</sup> These provisions permit corporations to seek damages from states that choose to ban a product or vendor for environmental or other reasons: a ban is considered “indirect expropriation” (or “regulatory expropriation”) of corporate assets. This makes some environmental and other legislation extremely or even prohibitively costly, effectively allowing corporations to influence or supplant legislative and juridical decision-making (and to extract a payment from taxpayers if the attempt to influence legislation fails).<sup>150</sup>

To illustrate this idea: imagine that my (American) company manufactures a compound called Useful Poison #9 (UP-9). UP-9 is added to many shampoos and

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<sup>149</sup> See Article 1110 of NAFTA and Article 10.7 of CAFTA for the language on which expropriation-and-compensation provisions of subsequent investment treaties have been modeled. See Singh (2005), 70-75 for a brief, helpful discussion of Article 1110 and relevant cases. Information on the U.S. Bilateral Investment Treaty program can be found at the website of the United States Trade Representative: [http://www.ustr.gov/Trade\\_Sectors/Investment/Section\\_Index.html](http://www.ustr.gov/Trade_Sectors/Investment/Section_Index.html), accessed 14 July 2008.

<sup>150</sup> Amat et al. (2003), 15-18; *Bill Moyers Reports* (2002); Charvériat et al. (2003), 9-10.

other hair-care products; it makes the user's hair blindingly shiny. I sell UP-9 to several companies in Canada that manufacture beauty products, and business has been good for a number of years. Unfortunately, routine water-quality tests are showing high levels of UP-9 in the water downstream of Canadian urban centers. Even worse, it seems that high levels of UP-9 have been definitively linked to a fatal epidemic disease afflicting Canadian geese in the same areas. The Canadian government bans the manufacture, import, and use of UP-9. My company must absorb a huge initial loss as manufacturers cancel orders for the UP-9 we've already produced; what's worse, I have permanently lost my market in Canada. But under Article 1110 of NAFTA, my company is entitled to sue the state of Canada for the "indirect expropriation" of my profits (present and future).

What my company would prefer, of course, is for Canada to refrain from banning UP-9 in the first place. Arguably, this is the real purpose of Article 1110: if states can be successfully threatened with a lawsuit, they can be prevented from "expropriating" corporate profits to begin with.<sup>151</sup> Intuitively, this seems like a case of coercion: my company threatens to do something it has no right, according to the norms of sovereignty, to do (sue a state)—unless the state refrains from doing something that is well within its scope for action (ban a harmful product).

The problem with this interpretation is that states must be signatories to one of the relevant treaties in order to be subject to the provision that grants corporations this problematic right. Perhaps some states have been coerced or deceived into signing treaties with this provision; perhaps they signed as part of an exploitative agreement.

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<sup>151</sup> Part of the reason these provisions are criticized is that they stretch the idea of expropriation beyond the point of absurdity. Normally, the term 'expropriation' is used to refer to events in which state governments intentionally seize corporate assets in order to enrich themselves and/or to hobble or expel private interests. To suggest that expropriation is taking place any time a state makes a decision that costs a foreign company its market is almost inarguably a misuse of the concept.

This doesn't seem unlikely, but we would have to look at a number of individual cases to know for certain.

However, even in the absence of a sovereignty violation, there is a serious problem with indirect expropriation. If CAFTA (e.g.) was signed freely, then many states have alienated an important sovereign prerogative: freedom from foreign suit. Insofar as the members of the body politic are ultimately responsible for funding any awards won against its country by foreign corporations (for the offense of attempting to protect the health of those same citizens—something the state surely has a mandate to do), accession to a treaty with a regulatory expropriation clause is a serious failure on the part of the state to respect its own role in authoring its citizens' lives.

### **C. Loss claims**

As the last example demonstrated, it is important to consider the problem of option loss in addition to the problem of sovereignty violation. A few additional reasons to consider the problem suggest themselves, as well. First, the widespread net loss of options would mean that states are, on the whole, somewhat less autonomous as a result of contemporary economic globalization. Second, even if a net option loss is due in some cases to free alienation, this means only that the alienating state itself is responsible for its lost autonomy—not that it didn't lose autonomy. Third, it is important to consider loss and free alienation because the violation claims are not applicable to many strong states: they do not take IMF loans and they set the agenda at the WTO.

#### *1. Diplomatic prerogative*

This is a concern about the dispute-resolution mechanisms built into both the WTO and a number of other trade agreements; notably including the North American

Free Trade Agreement (NAFTA), the Central American Free Trade Agreement (CAFTA), and their many bilateral clones. The norms of the sovereignty system treat the violation of an agreement as an occasion for traditional diplomacy, beginning with negotiations and the use of the bully pulpit. If these measures fail, some sanction or military action might follow. But the trade agreements mentioned provide standardized legal procedures for investigating alleged violations of the relevant agreement, determining guilt, and imposing sanctions or collecting damages if these are warranted.

For instance, if a WTO member formally charges another with a violation of the terms of their agreements, the matter is investigated and decided by a disinterested dispute resolution panel (and then affirmed by the general WTO membership, usually without further investigation or debate). The decision is binding in the sense that if a state loses a decision it must either change its problematic policy or suffer WTO-approved sanctions imposed by the winning party. While states could choose to submit to sanctions for the sake of its policy choices, this sort of stand is not practicable for poor and economically weak states. They are effectively bound by the interpretive decisions of the dispute resolution panel.<sup>152</sup>

Loss of the option to engage in bilateral negotiation is arguably not a significant loss. In fact, given that the dispute resolution panels are composed of disinterested individuals and have a track record of deciding against powerful countries reasonably often, they are quite possibly the best idea to emerge from the WTO thus far. In alienating the option to engage in bilateral diplomacy to resolve trade disputes, states gain the option to have their disputes decided by disinterested parties. This is probably a net gain in options at least for poor, weak countries whose chances of winning a trade dispute through bilateral negotiation is fairly minimal.

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<sup>152</sup> Khor (2000b), 11; Sassen (1998), 98.



## 2. *The prerogative to regulate imports*

The operations of the World Trade Organization provide two frequently-cited examples of loss claims. First, certain WTO rules, and the interpretation of those rules by dispute resolution panels, inhibit states' abilities to ban the importation of products. Two rules, in particular, have been heavily criticized on these grounds: the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS).<sup>153</sup>

The TBT agreement establishes a legal distinction between the processes and production methods (PPMs) used to make a product and the product itself. The importation of environmentally or otherwise objectionable *products* may be banned by WTO member states, but the importation of products made with environmentally or otherwise objectionable *processes* may not. The distinction is intended to prevent states from practicing protectionism under a cloak of moral or environmental responsibility.

Imagine that Canada, a WTO member, wants to protect its alphabet soup industry from cheaper, imported alphabet soup (from Mexico, say). It cannot place tariffs on Mexican soup because, we'll imagine, soup tariffs were entirely removed in the last round of negotiations. So the Canadian government bans all Mexican alphabet soup, claiming that the ban reflects the Canadian people's stand against labor practices in Mexican soup factories. Canada, in this imaginary case, is not honoring its treaty obligations in good faith. Its actions clearly represent an end-run around the goal of universal national treatment, and this is what the relevant provisions of the TBT are intended to prevent. The problem, of course, is that in a case where many Canadians *actually* care about working conditions in Mexican soup factories, their good-faith

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<sup>153</sup> See Mander (2000); Nader and Wallach (1996); Peet (2003), 171-173; Puckett (1999); Singer (2002), 63, 76, 90.

argument to ban the importation of Mexican alphabet soup until the working conditions improve will be met (and defeated) by the same provisions of the TBT.

Whether or not such a ban would actually help improve working conditions in Mexican soup factories is beside the point, but it might be reasonably argued that since some Canadians evidently want to buy the soup despite the working conditions of Mexican soup-makers (the soup is being imported and sold to someone, after all), those Canadians who don't want to buy the soup simply shouldn't buy it (rather than attempting to ban it). People might reasonably come to differing conclusions about this particular example case, but that, too, is ultimately beside the point. Why? Because the mere fact that a product has a market is not taken by anyone to be sufficient reason to legally permit the sale of that product: in its capacity as supreme legislator in a territory, it falls within the sovereign prerogative of the state to regulate commerce within its territory in accordance with the values and interests of its people. For instance, there are markets in the United States for sexual services, dog fights, and vehicle-mounted grenade-launchers. But no one may sell or buy these items.<sup>154</sup> The protection of citizens from sexual exploitation and assault by vehicle-mounted grenade launchers, and the protection of dogs from those who would treat them cruelly, is within the United States government's scope for action.

Likewise, it has been argued, if a significant portion of the Canadian body politic highly values decent and safe working conditions for unskilled laborers (and Canada does not allow Canadian companies to produce soup under conditions like those found in the imaginary Mexican soup factories), then it should be within Canada's scope for action to refuse to import products made under unsafe and unhealthy working conditions. But through the TBT agreement, Canada has alienated

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<sup>154</sup> Sexual "services" are permitted when they are given freely, while both dog-fighting and grenade-launchers are prohibited in general—so clearly, the justification for banning a product's sale and purchase can differ from one product to the next.

the option to ban the importation of such products (as well as products the manufacture of which harm animals or the environment). This is not a loss to be taken lightly.

The second agreement I mentioned, the Agreement on Sanitary and Phytosanitary Measures, establishes the burden of proof a member state must meet if it wishes to ban a product as a precaution: that is, if there is reason to think the product may be harmful to human life or health, or to the environment, but the existence of harm cannot be proven with available science. Products that can be shown to cause harm may be banned under WTO rules (provided, of course, that the harm is a result of the consumption or use of the product, not its manufacture). But the standards of justification for a merely *precautionary* ban are set very high by the SPS.

This, like the TBT, is not entirely unreasonable in principle. Imagine that Maple Splendor is a large and profitable Canadian cosmetics manufacturer. Maple Splendor approaches the Canadian government and explains that the company is a year away from being ready to launch a highly effective new wrinkle cream. But a major foreign competitor will be launching a cream with the same active ingredient in six months. To support Maple Splendor, the Canadian government bans the ingredient (and thus the competitor's product) for a period of one year, claiming that its safety has not been proven. The ban expires just in time for Maple Splendor's product launch.

This case represents a bad-faith interpretation of an international treaty on Canada's part, in much the same way as the first alphabet soup case. The problem, too, is similar: in the event that a country really is concerned about a product's potential hazards, it must meet a very high burden of proof in order to institute a ban. The effect of this is that while a state can prohibit the domestic manufacture of a product (or demand further testing of the product before it is allowed on the market) it

may not be able to prevent foreign versions of the product from being privately imported.<sup>155</sup>

### 3. *The mandate to address public health crises*

Another case furnished by the WTO concerns the Trade-Related Aspects of Intellectual Property agreements (TRIPs). TRIPs are intended to standardize intellectual property law across WTO member states. Perhaps because the countries with the most sophisticated (and tightest) intellectual property regimes are also among the most powerful countries (e.g. the United States and the countries of Western

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<sup>155</sup>Many have argued that both the TBT and the SPS conflict with Article XX of the original GATT, which ostensibly allows member states to ban a foreign product if doing so is thought by the state to be required for public health, environmental, or other important reasons. GATT Article XX reads, in part: “nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health;... (e) relating to the products of prison labour;... (g) relating to the conservation of exhaustible natural resources...” (full text of GATT available at [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm), accessed 27 June 2008). It has been suggested that if the TBT and SPS were brought into line with Article XX, these problems would be mitigated.

But the TBT itself, negotiated during the Tokyo Round and adopted by the full membership in the Uruguay Round, contains similar language: “no country should be prevented from taking measures necessary... for the protection of human, animal or plant life or health, [or] of the environment...” (full text available at [http://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm), accessed 27 June 2008). And the SPS begins with the words, “*Reaffirming* that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health...” (full text available at [http://www.wto.org/english/docs\\_e/legal\\_e/15sps\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm), accessed 14 July 2008). Despite these apparently straightforward affirmations of the right of a state to protect what it values when making trade policies, GATT dispute-resolution rulings have consistently failed to uphold this right. The EU, for instance, tried to ban beef containing growth hormones (1989), fur trapped with steel-jaw leghold traps (1991), and cosmetics tested on animals (1993) (see Singer 2002 for discussion). The first was successfully challenged on the basis of provisions in SPS (see SPS Articles 1 and 5). The latter two were successfully challenged on the basis of the product/process distinction, which at the time was derived from Articles III and X of GATT. A list of all GATT disputes (pre-WTO) are listed at [http://www.wto.org/english/tratop\\_e/dispu\\_e/gt47ds\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/gt47ds_e.htm) (accessed 27 June 2008).

There is some little evidence that this tendency to undervalue Article XX may be diminishing. Appellate body decisions regarding bans on asbestos (2001) and the provision of gambling services (2007), for instance, have upheld Article XX and the equivalent section of the General Agreement on Trade in Services (GATS). A list of all WTO disputes (1995-present) can be found at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (accessed 27 June 2008).

It is also worth noting that some in the developing world have charged that attempts to ban products made with environmentally unsustainable processes is “green protectionism:” poorer countries cannot meet the standards richer countries set, so an insistence on the right to ban a product based on the processes used to make it amounts to de facto support for bans on developing-country goods. See Bello (1997); Khor (2000b), 41+.

Europe), TRIPs have reflected these countries' interest in beefing up the intellectual property regime in developing countries. Some have worried that TRIPs have contributed to the emptying of the sovereign autonomy of middle-income and poor countries in particular, since it removes important options those states enjoyed under their own intellectual property regimes.

The best-known case, which arose in the early 1990s, involved attempts by middle-income WTO member countries (including South Africa, Brazil, and Kenya) to manufacture generic versions of lifesaving HIV/AIDS drugs for free or low-cost distribution in their own countries and in poor countries (very few of whose citizens can afford the name-brand medications owned by the developed world's large pharmaceutical corporations).<sup>156</sup> But the drugs were patented, and the patents protected by TRIPs. The middle-income countries were first threatened with WTO-approved sanctions (by the United States) and then sued (by the patent-holders). International outcry led eventually to a declaration allowing generic production of drugs to treat HIV/AIDS, tuberculosis, and malaria: the Doha Declaration on the TRIPs Agreement and Public Health, enacted in 2001.

The push for stricter intellectual property standards has not been abandoned, however: the United States, in negotiating bilateral trade and investment treaties, frequently pushes for intellectual property provisions even stricter than those enshrined in WTO agreements. In addition, it pushes newly acceding countries to accept a "TRIPs-plus" agreement as part of their accession package.<sup>157</sup>

When poor countries alienated the option to draft or preserve their own intellectual property regimes, they effectively alienated an important weapon in the

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<sup>156</sup> See discussions in Mander (2000); Peet (2003), 191-192; Singer (2002), 70-71; Stiglitz (2006), chapter 4.

<sup>157</sup> Oxfam International has followed this issue fairly closely; see Smith et al. (2004), Malpani and Kamal-Yanni (2006), and Malpani (2007).

fight against epidemic disease in poor countries: the option to manufacture off-brand drugs. This seems like a pretty straightforward net loss: it isn't clear that poor countries have gained anything at all by making themselves accountable to rich-country intellectual property laws. And if states have any moral mandates at all, they certainly have the mandate to take appropriate action in the face of a public health crisis like an epidemic of AIDS or tuberculosis.

By signing on to TRIPs (and TBT and SPS, for that matter), states suffer net losses of options even on the assumption that the relevant options were freely alienated (which, we should recall, is highly debatable, given the bad faith with which WTO regulations have been interpreted and applied by the most powerful countries). But even on this assumption, the loss of the options discussed so far is problematic: as an authority, a state infringes on its citizens' autonomy in order to achieve a valuable purpose. When a state cannot regulate the import of morally questionable or potentially unsafe products, or respond adequately to public health crises, it fails to meet the objectives for which its citizens' autonomy is infringed.

#### *4. The problem of neoliberal economics*

Finally, economic neoliberalism (as championed by the Bretton Woods institutions and many in the corporate and financial worlds) has itself been blamed for reducing sovereign option sets (in states where it has been adopted).<sup>158</sup> A number of tenets of neoliberal (Washington Consensus) orthodoxy have been criticized on these grounds.

Let's start with the hard one: exchange rates and financial deregulation.

Neoliberal economics demands that exchange rates be permitted to float freely. A floating exchange system means that the value of a country's currency is determined

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<sup>158</sup> Khor (1996); Khor (2000a); Stiglitz (2002).

by the market: if investors want British pounds, then the price goes up with the demand. If the pound becomes less desirable, it becomes cheaper. The reasons a particular currency might become more or less desirable are varied and complex (and by no means fully understood by this humble author). But the following simple case might help to explain it.

Imagine that a middle-income country's manufacturing sector has in recent years experienced substantial growth, including an increase in foreign investment. This means two things. First, value has been created: stuff has been made for firms to sell, both to individuals and firms within that country, and to foreign firms. Second, value has been injected, in the form of foreign capital. All of that new value has to be reflected, somehow, in the country's currency (because people and firms doing business in that country have to buy, sell, and invest using that country's currency): so, the currency increases in price.<sup>159</sup>

When combined with financial deregulation (the removal of rules governing foreign investment in domestic firms, particularly including rules governing how easy it is for a foreign investor to buy into and pull out of foreign stock exchanges), the floating exchange rate system has led in some cases to unstable, uncontrollable flows of capital into and out of countries.<sup>160</sup> That is, if a country's economy seems to be growing, foreign investors might sink money into that country's firms (through its stock exchange) and its currency—on the assumption that the values of both are going

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<sup>159</sup> Of course, a country's supply of currency has to go up when value is created in the economy (i.e. it should rise with GDP), or the country risks triggering domestic credit freezes and liquidity problems. That is, if there isn't enough actual money to keep pace with the value of the economy, firms could find themselves unable to pay employees or suppliers, and banks might not have enough money to lend. Too much extra currency causes inflation, as people are stuck with more money than the economy knows what to do with: prices rise to absorb the "excess."

<sup>160</sup> Brown (2003), 565; Scholte (1997), 443; Wolf (2004), 280-281, 295. International financial market speculation is widely thought to have contributed significantly to the East Asian financial crisis of the late 1990s. See, for instance, Bhagwati (2004), chapter 13; Bullard, Bello, and Mallhotra (1998); Chomthongdi (2000); Khor (1999); Stiglitz (2002), chapter 4. See Rodrik (2000) on the impossibility of having, simultaneously, floating exchange rates, liberal capital controls, and independently-determined monetary policy. See also Stiglitz (2006), chapter 9 on the global reserve system.

to increase. The country responds by increasing the money supply: its firms are worth more, and while being popular with foreign investors drives the price of a currency up, it takes some of that currency out of circulation. But if investors are “spooked” by something—rumors of civil unrest, to take a simple example—they are perfectly free to sell all their currency back (i.e. exchange it for “reserve” currencies: U.S. dollars, British pounds, euros, or yen) and pull their money out of the stock market. The stock market crashes, the country is flooded with domestic currency, and quite possibly, the country falls into a liquidity crisis as it runs out of reserve currency (needed to sell back to the investors demanding to pull out of the country, but also to pay for imports). It has been argued that to encourage states to alienate the option to control their money supply and regulate the in- and out-flows of foreign capital is to encourage the alienation of a very consequential option—with no compensating gains of other options. Without decent financial regulation, states are effectively at the mercy of investors and speculators. This kind of vulnerability is incompatible, I think, with the responsibility a state has to the citizens whose lives it partly-authors.<sup>161</sup>

The second feature we’ll consider is the so-called “race to the bottom.” The critique here is that the liberalization of foreign direct investment policies (i.e. the deregulation of foreign direct investment) has effectively allowed corporations to dictate their preferred labor, environmental, and tax frameworks at the expense of the frameworks preferred by the country in which they invest.<sup>162</sup>

Foreign direct investment (FDI) is the name for what’s happening when a firm headquartered in one country opens up an office, plant, or factory in another. (The firm is *directly* investing in the country, rather than indirectly through buying private

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<sup>161</sup> Even in the absence of financial crises like the one described, some argue that “[i]t is the internationalisation of capital that has been most problematic for maintaining social expenditure, because it has reduced the capacity of governments to fund deficits and stimulate employment” (Shaver 2004, 98).

<sup>162</sup> See Charvériat et al. (2003), 10-11; Goldsmith (1996), 88-89; Puckett (1999).



stocks, currency, or government bonds.) Before the widespread liberalization of FDI regulations, it was expensive and complicated (and sometimes impossible) to open a plant in a foreign country. But once it became easy and cheap for firms in wealthy countries to relocate, they did: developing countries offered very cheap labor, lower environmental standards, and in some cases, lower tax burdens. It has been alleged that developing countries have been rendered effectively unable to improve their labor and environmental standards (or to tax foreign corporations operating within their borders) because companies can always relocate someplace “friendlier.” Developed countries like the United States, on the other hand, are under pressure to slow or reverse progressive labor, environmental, and tax regulations in order to keep remaining manufacturing from leaving the country.

The liberalization of FDI and trade regulations has also given rise to a second concern: it has largely robbed states of the right to shelter and develop local firms and industries.<sup>163</sup> The “infant industry” approach to development holds that states can achieve economic growth in a sector by blocking foreign competition in that sector until domestic firms are strong enough to compete. If a state wants to develop its garment industry, for instance, it might place very high tariffs on imported clothing (and maybe subsidize the import of fabric and garment-manufacturing supplies). Moreover, the state would put a hostile tax framework or a set of legal obstacles in place for foreign direct investors, effectively keeping them from opening up a competing factory. Citizens will buy domestically-made clothing because it’s cheaper, the domestic garment firms will get better and stronger competing with each other, and tariffs on imported garments are lowered slowly (likewise, subsidies are

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<sup>163</sup> On the infant industry question, see, for instance, Rodrik (2001); Stiglitz (2006), 70-73. See Rodrik and Rodriguez (2000) for a discussion of the connection between open trade policy and economic growth.

phased out slowly) to give the domestic firms time to adjust. By the time the domestic firms have to compete with foreign firms, they are prepared to do so.

World Trade Organization agreements are inhospitable to infant industry “protectionism.” Tariffs, subsidies, and FDI regulation of the sort described in the case above are in most cases not permitted; raising protected infant industries is antithetical to the spirit of the whole enterprise, in fact. Opponents have argued that inexperienced firms in poor countries are simply never able to get off the ground: they cannot compete with cheaper and higher-quality imports.

The concern relating to sovereignty, of course, is that fostering a healthy domestic economy is an important mandate of sovereignty. WTO membership prevents one very attractive and sometimes successful way of doing that. Forgoing the option to protect nascent industries is supposed to be compensated by access to new markets for established exports. But this does not always work out as intended: if states are stuck exporting commodities because they cannot develop their industrial sectors, they remain less economically stable than industrialized countries (because commodity prices are less stable than prices for produced goods). Infant industry protectionism doesn’t always work either, but for a developing country to lose that option is arguably a net loss rather than a compensated one.

The fourth concern is that IMF conditions often require the privatization of state assets (i.e. land and resources, and state-owned companies). Few people are strongly in favor of widespread state ownership of industry—as has been pointed out innumerable times, a government monopoly can easily lead to inefficiency and corruption.<sup>164</sup> But the rapid privatization that has been encouraged by the IMF has in some cases (notably Russia) resulted in wealth that belongs to the public (because it belongs to the state) being sold, for cents on the dollar, to the very few wealthy people in the country

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<sup>164</sup> Whether it creates more inefficiency and corruption than the private sector is perhaps up for debate.

who can afford to buy things like discounted power companies and mines.<sup>165</sup> Insofar as wealth opens up options, the loss of massive amounts of wealth means that states lose options in these deals. Moreover, poorly-implemented privatizations are particularly good illustrations of how the loss of an authority's autonomy impacts those in the authority's domain. Such privatizations are direct transfers of the means to accomplish the state's most important mandates (e.g. the provision of basic education or the assurance of fair elections) out of the hands of the state and its body politic and into the hands of an already wealthy few.

### *5. Summary*

In sum: the institution of sovereignty has historically given states broad permissions to act in what they perceive to be their interests. The WTO and other trade agreements, as well as IMF loan agreements, involve formally relinquishing prerogatives to make certain kinds of decisions about domestic economic policy (including patent and copyright law, corporate tax law, social spending, the privatization of industry, and other issues suggested by the cases mentioned above). Further, the global financial architecture, blueprinted by the United States and other wealthy countries, renders states unable to protect their economies from the whims of global finance and the downward pressure of international competition. There is good reason to think that the practices and institutions named do not provide net gains in sovereign autonomy, and in fact, induce net losses instead.

### **D. Concluding thoughts: systemic effects of autonomy losses**

It would seem that we do have reason to think that states are suffering losses of both sovereign autonomy and sovereign prerogative. While the cases discussed are

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<sup>165</sup> See Stiglitz (2002), 54-59 and chapter 5.

clearly not burning down the sovereignty system (even considered all together), it might be useful to end by considering the ways in which a broadening and deepening of autonomy-diminishing practices could affect the sovereignty system overall.

Devastating and ubiquitous losses of autonomy-enabling options due to global war or climate disaster would quite likely dismantle the sovereignty system. But the more likely case involves significant but unevenly distributed losses. For instance, imagine that a large number of states were to suffer substantial and persistent losses in their abilities to fulfill their purposes as political authorities. These losses would not need to be caused by the same single factor or set of factors: perhaps a few states are undone by coercive proposals that go unchallenged by the international community. Others sign harmfully exploitative agreements the implications of which they do not initially understand and which weaken their economies irreversibly. Others suffer natural disaster, conflict, or economic collapse. Some fall victim to a destructive combination of factors. In the case where the failures persist—the states do not recover—then some of the remaining states, or perhaps non-governmental and intergovernmental organizations (NGOs and IGOs), might come to exert either power or de facto authority in those territories. This could, conceivably, lead the sovereignty system to regress into something resembling its late 19<sup>th</sup>-century incarnation: a system of maneuvering empires, rather than sovereign states. Perhaps it is more likely that some system of global trusteeship for failed states would emerge. But both of those systems would represent a profound shift away from a system of formally similar, legally equal, and independent political communities.

The systemic effects of widespread and deep loss of sovereign prerogative (alienation of options) would vary, I think, depending on whether the prerogatives were in large measure retracted by states' bodies politic or lost to external agents or institutions (as they are in the cases we've discussed). That is: perhaps the world will

eventually see many bodies politic take steps to reduce their states' scopes for action by formally removing particular prerogatives, instituting additional checks and balances, or shifting authority from the central government to sub-state regions. This, it seems, would not drastically change the shape of international relations. Supremacy in a domain, recall, measures an authority's scope for action relative to the scopes of all other authorities operative in that domain—it is not a fixed quantity such that the loss of a certain amount of prerogative would push an authority below some “supremacy threshold.” As long as states were still the *highest* authorities in their territories (i.e. had the broadest scope for action), it would not matter, for the purposes of identifying the system as a sovereignty system, if “highest” was no longer quite so high in absolute terms. Robert Jackson puts the point differently but nicely:

State sovereignty will come to an end [only] when people are no longer prepared to underwrite the doctrine that every political community must possess a government that is both superior to all other authorities in the country, and independent of all foreign governments.<sup>166</sup>

However, if states yield enough prerogatives to multilateral or civil institutions, there could come a day when states find themselves rivaled for the position of highest authority in their territory. This could happen if a few non-state institutions gained a great deal of authority in a particular region, eventually coming to share significantly in the responsibilities and prerogatives of government with the states in that region.

Alternatively, if enough of the purposes, mandates, and prerogatives of the state were farmed out to a network of overlapping non-state institutions, then even if a state was still nominally the highest authority in its territory, state borders could cease to demarcate meaningful bodies politic. If that were to happen, then state authorities

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<sup>166</sup> Jackson (2007), 112-113.

would no longer correspond to genuine domains (and thus could hardly be said to be supreme in them). For instance, imagine that in 2050 the people of Utah are subject to the criminal and civil laws of the North American Freedom and Justice Coalition, the utilities regulations of the Western American Water Authority, the labor and environmental standards set by the World Trade Organization, and the conscription lottery of the American Southwest Regional Armed Forces. (The other forty-nine states are similarly situated.) Even if the United States government still has the most scope for action in the territory of the United States, per se, there is a big question about whether there is any body politic associated with the term ‘United States’ anymore. The globalization of this kind of picture, more than the diminishing scope of the state per se, would spell the end of the sovereignty system.<sup>167</sup>

Even if none of these dire scenarios comes to pass, the individual cases of sovereignty violation and the loss or alienation of important options still matter. In violating a sovereign authority’s autonomy, an agent violates the autonomy of those whose lives the state partially-authors. And if a state alienates options it needs to fulfill its mandates, then it fails to accomplish the purposes for which its position exists, and is thus responsible for the purposeless violation of its citizens’ autonomy.

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<sup>167</sup> In the past two decades, a significant body of literature on the impact of globalization on citizenship (both our conceptions of citizenship and peoples’ actual, changing experiences of citizenship) has begun to emerge. Both cases just described (the case in which sovereign prerogative is limited from the inside, and the case in which options are formally alienated in a way that effectively transfers sovereign prerogatives to other entities) would impact the shape and experience of citizenship in affected states. For a good start on this topic, see Eckersley (2004) and Muetzelfeldt (2000) .

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